
Procedure: Family and Medical Leave

Reference No.: 2.5

Authority: College President

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SUNY Broome Community College recognizes that employees face conflicting demands of family obligations and work. Because employees may find it necessary to take leave from their jobs for a temporary period to address certain family responsibilities or their own serious health conditions, and in order to comply with the Family and Medical Leave Act of 1993 (FMLA), as amended, the College hereby establishes its parental leave and family and medical leave procedure.

1. General Information

A. General Entitlement for Taking Leave

The College will grant an eligible employee job protected leave for up to 12 workweeks during a 12-month period, if the procedures as specified herein are followed and leave is requested for any of the following reasons:

- a. The birth or adoption or the foster care placement of a child, or to care for such child;
- b. To care for an immediate family member (spouse, child or parent) of the employee if that individual has a serious health condition;
- c. A serious health condition of the employee that renders the employee unable to perform the functions of his or her job.
- d. For any qualifying exigency (determined by regulation by the Secretary of Labor) arising because the spouse, or the son, or daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the armed forces.

Employees granted leave for any of these reasons are limited to a maximum of 12 workweeks leave for any of these purposes. For example, an employee would be able to take 4 weeks sick leave and 8 weeks parental leave in the same 12-month period, but would not be entitled to take 12 weeks parental leave and any sick leave as FMLA leave during the same 12-month period. Entitlement to leave for birth, adoption or foster care placement of a child expires at the end of the 12-month period beginning after the birth, adoption or placement.

A husband and wife who both work for the College, and are eligible for FMLA leave, may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for birth, adoption, foster care or to care for a parent.

B. Service Member Family Leave

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered member of the armed forces, including a member of the National Guard or Reserves, may take up to a total of 26 workweeks of leave during a 12-month period to care for a service member who is undergoing medical treatment, recuperation, or therapy, is otherwise on outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

Leave described in this paragraph shall only be available during a single 12-month period. During this single 12-month period referred to here, an eligible employee is entitled to a combined total of 26 workweeks of leave for reasons described in Section 1, paragraphs A and B here.

A husband and wife who both work for the College, and are eligible for FMLA leave, may be limited to a combined total of 26 workweeks of leave during any 12-month period for leave taken to care for a service member as described here.

However, nothing in this (B) section limits the availability of leave under Section A – General Entitlement for leave during any other 12-month period.

C. Eligibility Requirements

The College will determine employee eligibility at the time of a leave request. Hours calculated will be based on actual hours worked, including any applicable overtime.

- a. To be eligible for FMLA leave, an employee must have been employed by the College for at least 12 months or 52 weeks, and have worked at least 1,250 hours during the 12-month period immediately prior to the time the leave will begin. Special rules for employees returning from military service require crediting the hours of service that would have been performed but for the period of military service in determining FMLA eligibility. The 12 months an employee must have been employed by the College need not be consecutive.
- b. In the case of exempt employees, the College will assume any employee employed full-time for seven and one-half months meets the 1,250 hours requirement. Exempt employees who have 12 months prior service, but less than seven and one-half months full-time continuous service at the time leave is requested should include documentation of hours worked with their request.

D. Alternative Leave Schedules

FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances.

- a. Leave taken for the serious health condition of an immediate family member or the employee may be taken on an intermittent or reduced leave schedule.
- b. Leave taken after the birth, adoption or placement of a child for foster care may be taken on an intermittent or reduced leave schedule only with the agreement of the College. Such leaves will be granted in increments of four hours or one day.
- c. For leave for planned medical treatment of the employee or immediate family member, or for reduced or intermittent leave, the employee may be required by his/her supervisor to arrange a particular schedule or to reschedule appointments or treatments, subject to the consent of the health care provider.
- d. Leave to support a qualifying exigency due to active military duty (per A d above) or to care for a family service member (per B above) may be taken on an intermittent basis.

In all cases of intermittent and reduced leave schedule, including part-time work after birth, adoption or foster care placement, the College reserves the right to require the employee to transfer to another position that better accommodates the employee's need for leave and/or College operations. This decision is in the sole discretion of the College.

The College reserves the right to refuse leave, or to cancel any such arrangements on 30 days notice if the College concludes that operational needs require the employee's presence on a full-time basis.

E. Filing a Leave Request

All requests for family or medical leave should ordinarily be initiated by contacting one's immediate supervisor and submitting a Request for Leave of Absence form along with either a Certification of Physician or Practitioner form describing the serious health condition and care required for a family member, (or the son, daughter, spouse, or parent of the employee, or the next of kin of an individual in the case of leave taken to care for a covered service member), or an Employee Leave Certification form (describing the serious health condition of the employee). All forms are available from the Human Resources Office.

a. Medical Certification

Medical certification required from the physician or practitioner providing health care to the employee or family member and/or the covered service member must be submitted to the College in a timely manner. Certifications will include the following information.

- the date on which the serious health condition commenced;
- the probable duration of the condition;
- appropriate and sufficient medical facts within the knowledge of the health care provider that would entitle the employee to take family or medical leave;
- an estimate of the amount of time that the employee is needed to care for a family member or a statement that the employee is unable to perform the function of the employee's position; and
- in cases of medical leave for the employee, an explanation of the extent to which the employee is unable to perform the functions of the employee's position.

FMLA leave is contingent upon both an employee's eligibility for such leave and the provision of adequate medical certification to support an FMLA leave request. Leave is also contingent upon any additional medical opinions which may be required. Because the process may be time consuming, it is possible that a final determination may not be made before an employee is on leave or has returned to work.

b. Second Opinions

The College reserves the option of requiring an employee to get a second opinion from an independent medical provider selected by the College. The College will pay for this second opinion. If the first and second opinions conflict, the conflict may be resolved by a third opinion from a provider agreed to by the College and the employee which shall be considered final and binding. The College will pay for the third opinion.

c. Certification Related to Active Duty or Call to Active Duty

Documentation as prescribed by the Secretary of Labor will be required to support an employee's request for leave related to exigency due to armed forces active duty of, or the call to active duty of his/her spouse, son, daughter, or parent.

F. Notice Requirements for Leave

a. Notice for Foreseeable Need

If the need for family or medical leave is foreseeable, the employee must provide at least 30 days notice to the College. Leave will be denied unless there is a reasonable excuse for the delay. If leave is denied for lack of notice, the College may designate the leave to start 30 days after notice is given.

b. Notice for Unforeseeable Need

If the need for family or medical leave is not foreseeable, notice must be given as soon as possible or practicable. Employees are expected to notify their immediate supervisor as soon as they learn of the need for leave. Written requests for leave should be submitted using the appropriate forms as soon as possible after the need for leave becomes known.

c. Notice for Leave Related to Active Duty or Pending Call or Order

In any case in which the necessity for leave for exigency due to a family member's being on active duty, or under pending order or call to active duty in support of a contingency operation, the affected employee shall provide such notice to the employer as is reasonable and practicable.

G. Substitution of Sick Leave, Compensatory Time and Vacation Time

If the leave is for an employee's serious illness, the employee will be required to substitute any accrued, earned sick leave. Unless an employee substitutes available accrued leave, leave will be unpaid, except as provided in this section. Substitution of paid sick/medical leave may be elected only to the extent circumstances meet the usual requirements for the use of sick/medical leave.

The College or the employee may choose to have an employee's FMLA leave entitlement run concurrently with a worker's compensation absence when the injury or illness is one that meets the criteria for a serious health condition. As of the date worker's compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or the College may require the use of accrued paid leave time.

Except as otherwise specified by contract, employees are required to substitute any accrued, earned vacation for any part of leave taken under this policy. The period of paid leave will be deducted from the amount of leave time available under this policy.

H. Periodic Reporting During Leave

Employees on leave may be required to report on their status and intent to return to work. During leave, the College may also require an employee to recertify the medical condition for which the leave was requested when the employee

requests an extension of the leave, when circumstances have changed or when the College obtains information which casts doubt on the continuing validity of the employee's original certification.

I. Confidentiality

The College will keep confidential all information relating to requests for family or medical leave. This information will be used only to make decisions in regard to the provisions of this policy. Supervisors must submit all records to Human Resources Office and should not retain any copies in their files.

2. Applicable Definitions

- A. **Serious Health Condition** - An illness, injury or impairment or physical or mental condition that involves a period of incapacity or treatment including or following in-patient care in a hospital, hospice or residential medical care facility; a period of incapacity requiring more than three days absence from work and continuing treatment by a health care provider; or continuing treatment by a health care provider for a chronic or long-term health condition so serious that, if not treated would likely result in incapacity of more than three days; or continuing treatment by or under the supervision of a health care provider of a chronic or long-term condition or disability that is incurable; or for pre-natal care. In the case of a member of the armed forces, including a member of the National Guard or Reserves, serious injury or illness means an injury or illness incurred by the member in the line of duty on active duty in the armed forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

Treatment does not include routine physical examinations, eye or dental examinations. A regimen of continuing treatment that includes taking over-the-counter medications such as aspirin or antihistamines, includes bed-rest, drinking fluids, exercise and other similar activities which can be initiated without a visit to a health care provider is not, of itself sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems and periodontal disease are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave.

The FMLA leave procedure does not make leave available to employees who wish to take leave to care for family members with non-serious health conditions. Employees can use accrued vacation time or unpaid leave for non-serious health conditions, subject to all applicable restrictions, including scheduling and increments of leave.

- B. Family Member - The spouse, son or daughter or parent (but not parent-in-law) of an employee. A son or daughter is any child under 18 who is the biological child of the employee, who is adopted by the employee, or whom the employee supervises on a day to day basis and for whom the employee is financially responsible. A son or daughter is also a child over 18 who is incapable of self-care because of a mental or physical disability. A parent is any individual who assumed day to day care and financial responsibility for the employee when the employee was a child.
- C. Covered Service Member – A member of the armed forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise on outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness.
- D. Outpatient Status – The status of a member of the armed forces assigned to a military treatment facility as an outpatient, or to a unit established to provide command and control of members of the armed forces receiving medial care as outpatients.
- E. Next of Kin – The nearest blood relative of an individual.
- F. Health Care Provider - Any doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, nurse practitioner, nurse midwife or clinical social worker performing within the scope of his/her practice as defined under state law. Christian Science practitioners and chiropractors are health care providers to the extent defined under regulations issued by the U.S. Department of Labor.
- G. 12-Month Period - The year beginning on the first date FMLA leave is taken. The next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period.

3. Status of Benefits During Leave

A. Health Benefits

During FMLA leave, the College will maintain the employee's health insurance benefits as follows. The employee is required to continue to pay the employee's portion of any health insurance premiums normally deducted from the employee's paycheck and shall pay such amounts at the time contributions are normally deducted by submitting a check payable to Broome County Commissioner of Finance to the Human Resources Department of the College.

If the employee fails to make the required payments, the College may decide at its sole discretion to continue coverage. If this is done, under most

circumstances, the College will have the right to recover these amounts. The employee will be notified whether coverage will be continued.

B. Other Benefits

Other benefits normally provided to an employee shall be provided only if permitted by the particular plan document governing the provisions of benefits, in accordance with the provisions of the plan document, and if the employee makes any required co-payments.

C. Leave Accrual

In accordance with existing College policies, employees on unpaid FMLA leave will not earn any vacation time, sick time or paid or compensatory holidays. Employees on paid FMLA leave will accrue vacation, sick, or paid or compensatory holidays in accordance with applicable accrual rules. Employees on an intermittent or reduced work schedule will earn vacation or other leave on a pro-rated basis if appropriate.

D. Seniority

An employee shall not accrue any seniority during unpaid leave provided under this policy.

E. Reinstatement of Benefits and Conditions of Employment

The College has the right, upon the employee's return from leave, to refuse to reinstate any benefit or condition of employment that has been discontinued for College employees.

4. Reinstatement After Leave

A. Same or Equivalent Position

An employee taking leave under this policy will be returned to the employee's same position or to an equivalent position, at the election of the College unless the employee would have been terminated in the absence of any leave (e.g., by layoff, downsizing, termination of a temporary job, etc.) Taking of leave will not result in any loss of benefits or conditions of employment accrued prior to the beginning of the leave period.

B. Fitness for Duty Certification

The College will require a fitness for duty certification prior to reinstating an employee after leave. The College reserves the right to make additional medical inquiries and/or require follow-up examinations, at its expense, to ensure that

employees can safely perform all job functions. These medical inquiries will be conducted in accordance with the Americans with Disabilities Act.

C. Repayment of Benefit Premiums

Employees returning to work following leave must meet with the Human Resources Department to work out an appropriate repayment schedule for any employee costs for premiums or co-payments made by the College during the leave period.

5. Failure to Return to Work

A. Continuation of Health Benefits under COBRA

When an employee notifies the College that he or she is not returning from leave, the College shall terminate the employee's health benefits and he/she shall no longer have a right to restoration to the same or equivalent position. The employee shall be entitled to continuation of health benefits only in accordance with the Consolidated Omnibus Budget Reconciliation Act (COBRA) and provisions of the health plan, provided, however, that any period of continued health benefits shall commence from the day FMLA leave commenced.

B. Repayment of Premiums

If the College receives notice that an employee is not returning from leave, if the employee simply fails to return to employment, or returns to employment for less than 30 days after leave has ended, the employee shall owe the College the cost of any benefits provided during leave, including both the College and any employee premiums and co-payments for health benefits. No such amount shall be owed if there is a recurrence or onset of a serious health condition, or in the opinion of the College, there is a change of circumstances beyond the employee's control.

If an employee does not return to work under circumstances where repayment can be required, the employee must repay all premiums within 60 days after receiving notice from the College of the amount owed. After that time, the matter will be turned over to collections as a debt, which could result in legal action.

C. Voluntary Termination

Employees who fail to return to work after FMLA leave shall be treated as having voluntarily terminated their employment.

6. General Provisions

A. Administrator

The College is the sole administrator of this procedure and, as such, is the exclusive interpreter of its terms. All provisions of this procedure shall be interpreted consistent with the Family and Medical Leave Act of 1993, as amended.

B. Changes

The College reserves the right to modify or terminate this procedure at any time.

C. No Employment Rights

This policy does not create any employment rights to any individual other than those specifically stated in the procedure.

D. Limitations

This procedure is not intended to create any rights greater than those conferred on employees by the Family and Medical Leave Act of 1993, as amended.

E. Rights and Responsibilities

Employees and employers have various rights and obligations under FMLA. For further information, contact the Human Resources Department.