

WALLA WALLA COMMUNITY COLLEGE FAMILY AND MEDICAL LEAVE ACT ADMINISTRATIVE PROCEDURE 5850

Introduction

The Family and Medical Leave Act of 1993 (FMLA) allows an eligible employee up to 12 weeks of leave in a 12-month period for a qualifying reason(s). In addition to the leave outlined below, an employee may also be entitled to other leave under negotiated agreements between the College and employee organizations and under other state laws.

General Provisions

Walla Walla Community College will grant up to twelve (12) weeks of leave during a rolling twelve (12) month period (measured forward from the date an employee begins FMLA leave) to eligible employees, in accordance with FMLA for one or more of the following reasons:

1. Parental leave for the birth and care of a newborn child in the first twelve (12) months after childbirth.
2. The placement of a child with the employee for adoption or foster care within the first twelve (12) months of placement.
3. To care for a spouse, child, or parent who has a serious health condition.
4. Due to the employee's own serious health condition.

Restoration

Any employee taking FMLA leave will be returned to the same position or to an equivalent position with the same benefits and conditions of employment as if the employee had been continuously employed during the leave period.

An employee returning from FMLA leave has no greater entitlement to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave period.

Eligibility for FMLA

An eligible employee is one who meets all of the following conditions:

1. The employee must have worked for Walla Walla Community College or another Washington State agency or institution of higher education for at least twelve (12) months (need not be consecutive) prior to the date the leave would begin.
2. The employee must have been employed for at least 1,250 hours (excluding any paid or unpaid leave) during the twelve (12) month-period immediately preceding the date the leave would begin.

Definitions

Parent: Means the biological parent of an employee or an individual who stands or stood *in loco parentis* to an employee when the employee was under 18 or incapable of self care. This does not include parents-in-law.

Son or daughter: Means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is under 18 years of age or 18 years of age or older and incapable of self care because of a mental or physical disability.

Spouse: Means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in states where it is recognized.

Foster Care: Means 24-hour care for children in substitution for, and away from their parents or guardian.

In loco parentis: Means someone with day-to-day responsibilities to care for and financially support a child, or in the case of an employee, who had such responsibility for the employee when the employee was a child.

Serious Health Condition: Means an illness, injury, impairment, or physical or mental condition that involves either:

- Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; or
- Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:
 1. A health condition (including treatment or recovery) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
 - a. Treatment two or more times by or under the supervision of a health care provider; or
 - b. One treatment by a health care provider with a continuing regimen of treatment; or
 2. Pregnancy or prenatal care. (A visit to the health care provider is not necessary for each absence); or
 3. A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). (A visit to a health care provider is not necessary for each absence.); or
 4. A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; or
 5. Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer, dialysis, etc.).

Health Care Provider: Means one of the following:

- Doctor of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices; or
- Podiatrist, dentist, clinical psychologist, optometrist, and chiropractor (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; or
- Nurse practitioner, nurse-midwife and clinical social worker authorized to practice, and perform within the scope of their practice, as defined under state law, or
- Christian Science practitioner listed with the First Church of Christ Scientist in Boston, Massachusetts, or
- Any health care provider recognized by the employer or the employer's group health plan benefits manager.

Continuation of Benefits

During approved FMLA leave, an employee's health and other benefits will continue at the same level and under the same conditions as if the employee had continued to work. The employee will be required to pay for their portion of their health care and other benefit premiums during their FMLA absence.

During paid leave, the College will continue to make payroll deductions for the employee's share of the health care and other premiums. During unpaid leave the employee must continue to make these payments. Payments should be made to the Payroll Office. The employee using unpaid FMLA leave will be required to indicate on the FMLA request form how they intend to pay their share of premiums during their absence.

If an employee chooses not to return to work at the conclusion of their unpaid FMLA leave for reasons other than a continued serious health condition of the employee or the employee's family member, or a circumstance beyond the employee's control, the employee will be required to reimburse the College the amount of health care premiums paid by the College for the employee during the FMLA leave period.

Leave Coverage and 12-Month Period

Measuring the 12-Month Period

An eligible employee can take up to 12 weeks of leave during a 12-month rolling-year period (measured forward beginning with the date the FMLA leave begins and ending 12 months later).

Both Spouses Employed by the College

If a husband and wife both work for the College they may only take a combined total of 12 weeks of FMLA leave in the 12-month period for the purpose of taking leave for the birth of a child, adoption of a child, or placement of a child in foster care, or to care for the employee's parent with a serious health condition. If either spouse uses a portion of the 12-week entitlement for the above reasons, they would still have their remaining entitlement for other FMLA purposes.

Accounting for Leave

Use of leave will be accounted for on an hourly basis. For example, a full-time employee scheduled to work 8 hours a day, five days a week, would be entitled to 480 hours of FMLA leave during the 12-month calculation.

For employees who work less than a full-time schedule, the amount of leave will be determined on a pro rata basis and will be determined based on the employee's status at the time of the request for leave.

Additional Leave for Disability Related to Pregnancy and Child Care

Washington State Law (RCW 49.78) provides for the birth and care of a child or for placement for adoption or foster care in addition to any leave used by the mother for sickness or temporary disability because of pregnancy or childbirth.

RCW 49.78.030(2) states:

"The family leave required by U.S.C. 29,2612 (a) (1) (A) and (B) of the federal family and medical leave act of 1993 (ACT Veb. 5, 1993, P.L. 103-3, 107 (Stat. 6) shall be in addition to any leave for sickness or temporary disability because of pregnancy or childbirth."

Therefore, if a mother has a disability relating to her pregnancy or childbirth and uses some or all of her 12-week FMLA entitlement, she is still entitled to the full 12 weeks to be used for the birth and care of a child or placement for adoption. However, if she uses the 12 weeks for her pregnancy-related illness and she then wants to use 12 more for her own illness or for some other reason other than childbirth, adoption or foster care, she would not have any FMLA available until her next FMLA year.

Medical Certification

Medical certification will be required for any request for use of leave for an employee's own serious health condition or to care for a family member with a serious health condition. When the College receives a FMLA request or is notified of a qualifying FMLA event, the employee will be asked to provide a Medical Certification. The certification must be completed within 15 calendar days of receipt and returned to the Human Resources Office. An extension may be provided based on a reasonable explanation for the delay (i.e., reasons outside of the employee's control, such as unavailability of treating physician, etc.)

To ensure a timely and accurate assessment of a leave request, the Medical Certification must be complete and all applicable information provided (a Family Medical Leave Health Certification form [U.S. Department of Labor Certification of Health Care Provider form – OMB No. 1215-0181]), must be filled out by a health care provider and forwarded to the human resources office. (This form is available in the human resources office.)

If the College has questions regarding the medical certification, it may be returned to the employee with direction to have the health care professional clarify the information. If the College has reason to question the medical certification, it may elect to seek a second opinion from a health care provider of their choosing at the College's expense. If the second opinion conflicts with the first opinion, a third opinion may be obtained at College expense from a health care provider mutually chosen by the employee and the College. The third opinion will be controlling. The employee will be considered provisionally entitled to leave pending the second and/or third opinion.

Intermittent Leave

Intermittent leave or leave on a reduced schedule will be granted if medically necessary for an eligible employee's own serious health condition or to care for a family member with a serious health condition. Medical documentation of the need for the leave on an intermittent basis or for leave on a reduced schedule will be required.

If an employee needs intermittent leave or leave on a reduced schedule for the employee's own serious health condition or to care for a family member with a serious health condition, a medical certification must be completed. In addition, medical certification may need to be recertified periodically to establish ongoing need, reverification of a condition, or to communicate other changes in prognosis.

Employees needing intermittent leave or leave on a reduced schedule for foreseeable medical treatment must work with their department to schedule the leave, subject to the approval of the health care provider, so as not to unduly disrupt the department's or the College's schedule.

The College may choose to grant leave on an intermittent basis for the care of a newborn child or a foster or adopted child. Granting of intermittent leave for this purpose is discretionary and will be determined on a case-by-case basis. If such leave is granted, the employee and the College must mutually agree to the schedule to be worked before the employee may take the intermittent leave.

The College may temporarily transfer an employee using intermittent leave to an alternate position for which the employee is qualified, with equivalent pay and benefits, if the alternate position would better accommodate the intermittent schedule.

Employee Request for Leave and Employer Designation

It is the employee's responsibility to notify the College of the need for leave. The employee will provide the College with not less than thirty (30) days' notice before the FMLA leave is to begin. If the need for the leave is unforeseeable thirty (30) days in advance, then the employee will provide such notice when feasible. The notification should include reasons for leave, anticipated dates, and duration of the leave. This allows the College to determine if the leave qualifies for FMLA leave. The human resources office will provide the employee with a FMLA request form to be completed by the employee and a medical certification form to be completed by the employee's or family member's health care provider. Once a FMLA request has been made, the College will determine eligibility and notify the employee of either:

- Approval of leave and whether the leave will be designated as FMLA, or
- Denial of leave and the reasons for the denial (i.e., employee does not qualify, the reason employee does not qualify under FMLA, employee is over the 12 weeks for the rolling year, etc.)

FMLA designation is the sole responsibility of the College

Substitution of Paid Leave

The College will not require an employee to substitute paid leave for otherwise unpaid FMLA leave.

Walla Walla Community College employees may use any combination of paid or unpaid leave to which they are entitled toward the FMLA entitlement. The use of any leave paid or unpaid (excluding compensatory time earned under the Fair Labor Standards Act) for a FMLA qualifying event will run concurrently with, and not in addition to, the use of FMLA for that event. The types of leave that can be substituted for otherwise unpaid FMLA leave include annual leave, sick leave, shared leave, or personal holidays. Leave without pay for an absence covered by worker's compensation will also run concurrently with FMLA.

Substitution of sick leave shall only be allowed under situations where sick leave would normally be allowed pursuant to state laws or College policy. Compensatory time earned, pursuant to the Fair Labor Standards Act, will not be counted toward the FMLA entitlement (although an employee is allowed to use compensatory time for a FMLA qualifying event.)

Returning to Work

Upon returning to work after the employee's own FMLA illness, the employee will be required to provide a fitness for duty certificate from his/her health care provider. The fitness for duty certificate must be job related and consistent with business necessity. A fitness for duty certificate will not be required for intermittent leave usage.

This procedure will be implemented in accordance with the FMLA and its accompanying regulations. To the extent items or aspects of the FMLA or its accompanying regulations are not covered in this procedure, those items will be interpreted in accordance with FMLA and its regulations.

<p>Policy Contact: <u>VP of Human Resources</u></p> <p>Approved by (Department/Body): <u>President</u></p> <p>Date Originally Approved: <u>July 2005</u></p> <p>Last Reviewed/Revised on: _____</p>
