

## FAMILY AND MEDICAL LEAVE ADMINISTRATIVE PROCEDURES

These procedures are provided to serve as guidance to the Human Resources staff responsible for administering FMLA leave.

### 1. Eligibility

#### 1.1 All CUNY employees who meet the following requirements:

- a. Have been employed by the University for at least 12 cumulative months, not necessarily consecutive; and
- b. Have worked for at least 1,250 hours during the 12-month period immediately preceding the start of the leave; or
- c. Are employees who have a break in service due to military service, and whose military service combined with the time employed and hours actually worked for CUNY satisfy the time and service requirements (in compliance with the Uniformed Services Employment and Reemployment Rights Act of 1994).

### 2. Permissible Reasons for Taking FMLA Leave

- a. Birth and care of employee's newborn child
- b. Placement of child for adoption or foster care with employee
- c. Care of employee's spouse, domestic partner, child or parent with a serious health condition<sup>1</sup>
- d. Medical leave for employee's own serious health condition
- e. In cases of "a" and "b" above, FMLA leave must be taken during the 12-month period beginning on the date of the birth or placement of the child. In addition, spouses or domestic partners who are employed at the same CUNY College are limited to a COMBINED total of 12 weeks within the FMLA leave year, when taking leave for reasons "a" and "b"
- f. Certain circumstances relating to the fact that the employee's spouse, son, daughter, or parent is a military service member who is on active duty or has been notified of an impending call or order to active duty in the Armed Forces (the circumstances are referred to in the FMLA as a "Qualifying Exigency", see Definitions)

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<sup>1</sup> Leave taken to care for a family member for this reason is limited to twelve weeks, unless otherwise required by law.

- g. Where an employee is caring for a seriously injured or ill service member (including a veteran) who is the employee's spouse, son, daughter, parent, or next of kin<sup>2</sup>

### **3. College Notification Responsibilities**

- 3.1** Each College must conspicuously post a notice explaining the provisions of the Family and Medical Leave Act (the federal legislation) and providing information concerning procedures for filing complaints of violations.
- 3.2** Any written (or website) guidance regarding employee benefits, leave rights, or policies/procedures should include information on FMLA.
- 3.3** If oral notice is given by the employee (or his or her representative) of the need for FMLA leave, at the time it is received, the Human Resources Director shall advise the employee or his/her representative of the employee's obligation to follow up any oral notice with a written leave request.
- 3.4** Upon receipt of an employee's leave request, the Human Resources Director shall provide the employee with a notice informing the employee of whether he/she meets the eligibility requirements for an FMLA leave, and the rights and responsibilities of the employee in connection with any such leave. Such notice must be provided within five (5) business days after the employee's leave request in a particular FMLA leave year.
- 3.5** Once the College has sufficient information to determine whether an employee qualifies for an FMLA leave, the College must notify the employee, in writing, whether or not the leave is designated as FLMA leave, and if it is, the amount of leave (if known) that will be counted against the employee's FMLA leave entitlement. Such designation notice must be provided within five (5) business days. If the College will be requiring a fitness for duty certification to be restored to employment, the College must inform the employee of this requirement in the designation notice.
- 3.6** Even if an employee does not expressly request FMLA leave, the Human Resources Director has the right to designate any eligible employee's qualifying absence as FMLA leave. The employee will be sent written notification that his/her absence has been designated as FMLA leave.

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<sup>2</sup> "Serious injury or illness" includes injury or illness of a member of the Armed Forces existing prior to the service member or veteran's active duty and was aggravated by service

#### **4. Employee Notification Responsibilities**

##### **4.1 Leave Request**

- a. Employee must request FMLA leave in writing, using the University's authorized leave form. This request must be made to the Human Resources Director at least 30 days in advance if the leave is foreseeable.
- b. When unforeseen events require FMLA leave, the employee must advise the Human Resources Director of the need for leave as soon as practicable.
- c. If the employee him/herself is unable to give notice, it may be given by the employee's representative orally or in writing. In those instances in which oral notice is given, such notice must be formalized promptly by submission of an official written leave request on the University's authorized form.
- d. All leave requests must include the reason for the leave, the anticipated duration of the leave and anticipated start of the leave.
- e. In exceptional circumstances, and where it is not possible, the employee will not be required to request FMLA in writing.

#### **5. Certification of Family Relationship**

Certification of family relationship is required when a leave is requested for birth/adoption or foster care placement of a child, when the leave is requested to care for a serious medical condition of a covered family member with a serious health condition, and when leave is requested in connection with military-related leaves.

#### **6. Medical Certification for Leave Taken for the Serious Health Condition of an Employee or the Employee's Family Member**

- 6.1** In the case of the serious health condition of an employee or the employee's family member, a request for leave must be supported by a written certification issued by an approved health care provider (see Definitions). The medical certification must be provided on a "Certification of Health Care Provider Form" and submitted to the Human Resources Director within 15 calendar days of the date of the request for leave. If the certification is incomplete or insufficient, the Human Resources Director must provide the employee with seven calendar days to cure any such deficiency.
- 6.2** After receiving the completed medical certification, the Human Resources Director may contact the employee's health care provider for purposes of authentication or clarification of the certification. If the Human Resources Director is seeking clarification, he/she must receive written authorization from the employee to contact the health care

provider.

- 6.3 If the College has reason to doubt the validity of a medical certification, the College, at its own expense, may require a second opinion from an independent health care provider who is not regularly utilized for such purposes by the College. If the second opinion differs from that of the original health care provider's, the College may require the opinion of a third health care provider who is approved jointly by the College and the employee, at the College's expense. The third opinion will be final and binding on the College and the employee.
- 6.4 The College may require the employee to obtain recertification on a reasonable basis, but in most cases not more often than every 30 days.
- 6.5 In the case of the employee's own serious health condition, the employee may be required, on or before the date he/she returns to work, to provide a certification from a health care provider confirming that the employee is able to return to work and perform the essential functions of his/her position.

## **7. Certifications for Military-Related Leaves**

- 7.1 In a case where an employee requests an FMLA leave based on circumstances relating to the active duty or call to active duty status of an employee's spouse, son, daughter or parent, a request for leave must be supported by (a) a copy of the military member's active duty orders or other documentation showing that he/she is in active duty/call to active duty status; and (b) a certification from the employee, with the required documentation, provided on a "Certification of Qualifying Exigency for Military Family Leave" form" and submitted to the Human Resources Director within 15 calendar days of the date of the request for leave.
- 7.2 In a case where an employee requests an FMLA leave to care for a service member (which includes a veteran) with a serious injury or illness, a request for leave must be supported by a certification to be filled out by both the employee and by a health care provider (generally from the Department of Defense or the Department of Veterans Affairs), provided on either a "Certification for Serious Injury or Illness of a Current Service member for Military Family Leave Form" or a Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave" form documenting the serious injury or illness and the care required. The Certification must be provided within 15 days of the date of the request.

## **8. Leave Types**

- 8.1 Regular leave is leave taken in a block of time spanning from a few days to a few weeks and up to the full 12-week entitlement.

**8.2** Reduced schedule leave is any reduction in the usual number of working hours per day or per week the employee works.

**8.3** Intermittent leave is any leave taken in single blocks of time due to a single qualifying reason. The time can be taken in increments in the same manner as annual and sick leave.

## **9. Use of Leave**

**9.1** Regular leave may be taken for any qualifying reason. However, intermittent or reduced schedule leaves can be taken only because of one's own serious health condition, to care for a family member with a serious health condition, or to care for a service member (including a veteran) with a serious injury or illness, where there is a medical need for such a leave.

**9.2** Employees will be required to use available paid leave prior to being granted authorized unpaid leave.

- a. For the serious health condition of an employee, which may include a pregnancy-related condition, paid sick leave accruals must be used first, followed by all other available time and leave accruals.
- b. For the birth and care of a newborn, placement with the employee of a child for adoption or foster care, or for care necessitated by the serious health condition of a family member, all available paid time and leave accruals (including paid parental leave) other than sick leave accruals must be charged before unpaid leave may be granted.
- c. Pursuant to the Blue and White Collar Contracts, and the PSC-CUNY Agreement a covered employee may use three days of accrued sick leave for the care of an ill family member.

## **10. Recordkeeping Requirements**

**10.1** Records relating to FMLA leave must be kept for a minimum of six (6) years and will include: basic payroll and identifying employee data; indication that FMLA requests have been made; copies of requests (excluding confidential medical information); records of employees' use of FMLA leave; copies of notices received by and given to the employee; and, records of any disputes regarding the designation of leave as FMLA leave, including any written statements by either the College or the employee regarding the disagreement.

**10.2** Records and documents relating to medical certifications, re-certifications, or medical histories of employees or employees' family members shall be maintained in separate

files from the employee's other personnel file and be treated as confidential medical records.

## **11. Health Benefits During FMLA Leave**

The employee's health benefits coverage will be maintained under the same conditions as existed prior to the start of the FMLA leave. The employee will remain responsible for his/her contributions, if any.

## **12. Return From FMLA Leave**

**12.1** On return from FMLA leave, an employee is entitled to be reinstated to the same position he/she held when the leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. Barring exceptional circumstances, such as an intervening layoff, the employee must be reinstated to the same College (not necessarily to the same campus/department location) where the employee had worked.

**12.2** Employee benefits must be restored on the same terms as existed before the leave without any qualifying period, physical examination, or exclusion of pre-existing condition. These benefits include restoration of rights to life insurance, disability insurance, educational benefits and pension plans. Upon return from FMLA Leave, the employee may be required to complete additional forms to reinstate benefits.

## **13. Failure to Return From FMLA Leave**

**13.1** An employee who fails to return to work at the conclusion of FMLA leave may be liable for payment of the health plan premiums paid by CUNY during any unpaid portion of FMLA leave.

**13.2** Repayment is not required if the reason the employee does not return is due to the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control (e.g., layoff).

**13.3** An employee on FMLA leave who fails to return to work upon expiration of leave, and has not received authorization for the use of any remaining paid or unpaid leave available to him or her, may be subject to disciplinary proceedings or other action in accordance with CUNY policies, rules and regulations, and applicable collective bargaining agreements.

## **14. Impact: FMLA and Other Employment Issues**

**14.1** Paid FMLA leave is considered creditable service in determining eligibility for tenure, certificate of continuous employment, certificate of continual administrative service, or

fellowship leave. Unpaid FMLA leave serves as a bridge so that credit for prior service shall be counted in computing the years of service immediately preceding the leave toward tenure, certification, or fellowship leave.

## **14.2 Salary Increases**

- a. Employees in titles covered under contractual agreements with the Professional Staff Congress who are approved for FMLA leave will receive increment credit for time taken, whether paid or unpaid. This time shall be credited provided that its duration, in combination with any other approved leave for which increment credit may be recommended, is under the total period of a year in length.
- b. Employees shall receive credit towards salary increases for any time on approved paid FMLA leave.
- c. There will be no break in continuous service for time on an approved unpaid FMLA leave. Rather, an unpaid FMLA leave will be bridged for the purposes of granting salary increases based on service or longevity.
- d. In instances where salary increases are granted as a consequence of continuous service as of a specific quarterly date, when an employee does not meet the eligibility for the increase (for the service increment or longevity differential) due to absence on an unpaid FMLA leave, the service or longevity contractual salary adjustment shall be delayed until the following quarter.

## **14.3 Completion of Probationary Service - Classified Staff**

The College Appointing Officer may extend the required probationary period by any period of leave without pay, and any period of paid leave that is in excess of total sick and annual leave days earned during the probationary period.

## **14.4 Pension Contribution**

- a. CUNY will continue to make pension contributions and will deduct from the employee's paycheck his/her pension contribution, if any, during the paid portion of FMLA leave.
- b. While on an unpaid FMLA leave, pension contributions will not be made by the University. However, if the employee is a Tier 1 member of the NYC Teachers Retirement System, unpaid FMLA leave taken may be creditable towards retirement benefits provided other eligibility factors are met. The University Benefits Office may be contacted for any assistance or clarification concerning this matter.

## FMLA: Applicable Definitions

### FAMILIAL RELATIONS

**Spouse** - husband or wife recognized under New York State law.

**Domestic Partner** - one of two people meeting the requirements for recognition under the New York City Domestic Partnership Law (For more details, contact the College Benefits Office).

**Child** - a biological, adopted, foster, stepchild, legal ward, or a child of a person standing in *loco parentis*, who is either under age 18, or is 18 and over and incapable of self care.

**Parent** - a biological, adoptive, step or foster father or mother or any other individual who stands or stood *in loco parentis* to an employee when the employee was a child; does not include parents "in law".

**Persons *in loco parentis*** include those with day-to day responsibilities to care for or financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child.

**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: blood relatives who have been granted legal custody of the covered service member, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative for purposes of military caregiver leave.

### INCAPACITY

**Incapable of self care** means that the individual requires active assistance or supervision to provide daily self care in three or more activities of daily living (ADLs) or instrumental activities of daily living (IADLs).

**Incapacity** - inability to work, attend school or perform other regular daily activities due to a serious health condition, its treatment, or recovery.

### TREATMENT

**Treatment** includes examinations to determine if a serious health condition exists and evaluations of the condition. It does not include routine physical, dental, or eye examinations.

A **regimen of continuing treatment** includes for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition.



**SERIOUS HEALTH CONDITION** - an illness, injury, impairment, or physical or mental condition that involves either:

- 1. 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**
- 2. Continuing treatment by a health care provider**, including any one or more of the following:
  - a. A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that **also involves**:
    - (i) Treatment two or more times (within 30 days from the first day of incapacity) by or under the supervision of a health care provider, with the first treatment within seven days of the first day of incapacity; **or**
    - (ii) One treatment by a health care provider (within seven days of the first day of incapacity) with a continuing regimen of treatment; **or**
  - b. Any period of incapacity due to **pregnancy or prenatal care**; **or**
  - c. Any period of incapacity or treatment for a **chronic serious health condition**, defined as a condition which continues over any extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve episodes rather than a continuing period of incapacity (*e.g.*, asthma, diabetes). A visit to a health care provider is not necessary for each absence; **or**
  - d. A period of incapacity for 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**
  - e. 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).

### **HEALTH CARE PROVIDERS**

- Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; **or**
- Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (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 practitioners, nurse-midwives, clinical social workers and physician assistants authorized to practice, and performing within the scope of their practice, as defined under state law; **or**
- Christian Science practitioners 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; **or**

Health care providers in any of the above categories who practice in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

**QUALIFYING EXIGENCY** - Circumstances qualifying employee to leave when his or her spouse, son, daughter or parent is in a regular component of the Armed Forces deployed to a foreign country or to active duty in the National Guard or Reserve branches of the Armed Forces deployed for a foreign country under a Federal call or order in support of a contingency operation:

- (1) to address any issue that arises from the fact that a service member receives short-notice (seven calendar days or less) of deployment
- (2) to attend military events and related activities, including official ceremonies sponsored by the military or family support or assistance programs relating to the active duty of a service member
- (3) to arrange for or provide childcare or to deal with school-related activities resulting from the active duty/call to active duty of a service member
- (4) to make or update financial, legal or military benefits arrangements relating to a service member's active duty or call to duty status
- (5) to attend counseling provided by someone other than a health care provider, when the need for counseling arises from the active/call to active duty status of a service member
- (6) to spend time with a service member who is on short-term, temporary, rest and recuperation leave during the period of deployment
- (7) to attend official ceremonies following a service member's active duty status, or to address issues arising from the death of a service member while on active duty status
- (8) for purposes of parental care where the parent of the military member is incapable of self-care; and
- (9) to address other events arising out of a service member's active duty status or call to active duty status if agreed to by the College

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