

7.8 FAMILY MEDICAL LEAVE

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Purpose

Delaware County Community College (DCCC) is committed to compliance with the Family and Medical Leave Act of 1993 (the "FMLA"). The purpose of this policy is to provide employees with a basic understanding of their rights and obligations under the FMLA.

Policy Statement

The Family and Medical Leave Act (FMLA) of 1993, as amended, is a federal law that provides eligible employees of covered employers with unpaid, job-protected leave for specified family and medical reasons. Eligible employees may take up to twelve (12) workweeks of leave in a 12-month period for the following qualifying reasons:

1. the birth or adoption of a child;
2. to care for a spouse, child, or parent with a "serious health condition;"
3. for a "serious health condition" of your own that makes you unable to perform your job responsibilities;
4. any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or call to covered active-duty status;
5. to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

All employees who have been employed at least twelve months, and who have worked at least 1,250 hours during the twelve months prior to the leave request are eligible for an unpaid family and/or medical leave of absence under the FMLA. DCCC will use a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave to determine leave eligibility.

In addition to the entitlement of unpaid leave, employees on a FMLA-protected leave will continue to maintain their group health and other fringe benefits during the 12-week FMLA-protected leave and will be restored to their same or an equivalent job at the conclusion of the leave. Employees are protected from interference and retaliation for exercising or attempting to exercise their FMLA rights.

If eligible and anticipate the need for a family or medical leave, employees must contact their supervisor or Human Resources representative at least 30 days in advance of foreseeable events and as soon as possible for unforeseeable events. The Human Resources representative will then coordinate the FMLA leave with the employee and their supervisor for the duration of the leave. The Human Resources Department will provide all applicable forms. DCCC will require employees to submit certain health care provider certification forms to determine eligibility for a FMLA-protected leave for an employee's own "serious health condition" or that of a spouse, child, or parent.

Designation of FMLA:

1. DCCC is responsible for designating leave as FMLA-qualifying and giving a Designation Notice to the employee. The

Designation Notice informs the employee that the requested leave will be designated as FMLA leave and sets out the requirements applicable while the employee is on leave.

2. FMLA Concurrent with Unpaid Leave: If an employee is eligible for FMLA and unpaid leave (i.e., disability leave plan), DCCC shall designate the employee's leave as FMLA which shall run concurrently with unpaid leave pursuant to established College paid time off policies. The employee shall not be eligible for 12 weeks of unpaid leave and an additional 12 weeks of FMLA leave.

FMLA Concurrent with Paid Leave: The College will require an employee on a FMLA-protected leave to exhaust all available paid time-off pursuant to established paid time-off policies, which will run concurrently with an employee's unpaid FMLA leave.

DCCC will designate the employee's leave as FMLA according to the dates outlined in the employee's medical certification, except if the employee produces an acceptable medical certification that pre-dates the request for FMLA. In this case, DCCC will designate the employee's leave as FMLA beginning with the date the employee requested FMLA information. The Family Medical Leave Act permits DCCC to designate an employee's leave of absence as FMLA retroactively when:

1. DCCC provides notice to employee; and
2. the retroactive designation does not cause harm or injury to the employee.
3. Note: The above exceptions do not apply to Intermittent FMLA Requests.

So that the College can properly prepare for an employee's return to work, we ask that employees provide Human Resources with at least two weeks advanced notice of the date they intend to return. When an employee returns from their own FMLA leave qualifying illness, they may be asked to submit to Human Resources a Fitness for Duty Certification indicating the ability to perform their job duties.

If an employee is unable to return to work as planned, they must contact the Human Resources Department to discuss alternative options. If an employee fails to return to work on the agreed upon return date and has not made other arrangements, DCCC will assume that the employee has voluntarily resigned their employment.

The Human Resources Department is available to assist both the employee and their supervisor with any questions related to this important benefit.

Eligibility

Employees are eligible for FMLA-protected leave if they have worked for the DCCC for at least 12 months and have worked at least 1,250 hours during the 12-month period before a request for FMLA-protected leave.

Note: Employees eligible for FMLA leave must be eligible for the College's benefit programs in order to be entitled to any paid leave referenced in this policy. Otherwise, the entire leave will be unpaid.

Qualifying Reasons

Employees may take up to 12 workweeks of unpaid FMLA-protected leave in a 12-month period for the following qualifying reasons:

- The birth of a child and to bond with the newborn child within one year of birth,

- The placement with the employee of a child for adoption or foster care and to bond with the newly placed child within one year of placement,
- A serious health condition that makes the employee unable to perform the functions of his or her job, including incapacity due to pregnancy and for prenatal medical care,
- To care for the employee's spouse, son, daughter, or parent who has a serious health condition, including incapacity due to pregnancy and for prenatal medical care;
- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.
- To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember

Military Family Leave

Eligible employees are entitled to two types of FMLA leave related to a qualifying family member's military service. This type of FMLA leave is referred to as military family leave.

The military family leave provisions of the FMLA entitle eligible employees of covered employers to take FMLA leave for:

- Any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the Armed Forces, or
- To care for a covered servicemember with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin. - FMLA leave for this purpose is called "military caregiver leave."

Qualifying Exigency Leave

An eligible employee may take qualifying exigency leave when the employee's spouse, son, daughter, or parent who is a member of the Armed Forces (including the National Guard and Reserves) is on covered active duty or has been notified of an impending call or order to covered active duty.

Covered Active Duty

In order for the employee to take qualifying exigency leave, the military member must be on covered active duty, under a call to covered active-duty status, or have been notified of an impending call or order to covered active duty.

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

For members of the Reserve components of the Armed Forces (members of the U. S. National Guard and Reserves), covered active duty is duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of 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.

To take qualifying exigency leave, the military member must be the employee's spouse, parent, or son or daughter. Unlike non-military FMLA

leave, for purposes of qualifying exigency leave, an employee's son, or daughter on covered active duty refers to a son or daughter of any age.

Military Caregiver Leave

Military caregiver leave allows an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness to take up to a total of 26 workweeks of unpaid leave during a "single 12-month period" to provide care for the servicemember.

A covered servicemember is either:

- **Current Servicemember:** A covered servicemember means a current member of the Armed Forces, including a member of the U. S. 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; or

A serious injury or illness for a current servicemember is an injury or illness that was incurred by the servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness may also result from the aggravation of a pre-existing condition in the line of duty on active duty.

- **Veteran:** A covered servicemember means a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness, and who was discharged within the previous five years before the employee takes military caregiver leave to care for the veteran.

A serious injury or illness for a veteran is an injury or illness that was incurred in the line of duty when the veteran was on active duty in the Armed Forces, including any injury or illness that resulted from the aggravation of a preexisting condition in the line of duty on active duty. The injury or illness may manifest itself during active duty or may develop after the servicemember becomes a veteran.

Definitions

A "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- A period of incapacity requiring absence of more than 3 calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a healthcare provider; or
- Any period of incapacity due to pregnancy or for prenatal care; or
- Any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy); or
- A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases); or
- Any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a healthcare provider for a condition that likely would result in incapacity

of more than 3 consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis)."

A "qualifying exigency" is defined as: short notice deployment, attending military events and activities, arranging for alternative childcare or school activities, addressing financial and legal arrangements, attending counseling, rest and recuperation, attending post-deployment activities within 90 days following the termination of the covered military member's active duty or call to active duty (provided that the employer and employee agree that such leave shall qualify as exigency, and agree to both the timing and duration of the leave).

"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 either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.

"Family member" includes children, spouse, parents, but not son-in law, daughter-in-law or parents-in law.

"In loco parentis" means those with day-to-day responsibilities to care for or financially support a child. Employees who have no biological or legal relationship with a child may, nonetheless, stand in loco parentis to the child and be entitled to FMLA leave. Similarly, an employee may take leave to care for someone who, although having no legal or biological relationship to the employee when the employee was a child, stood in loco parentis to the employee when the employee was a child, even if they have no legal or biological relationship.

"Spouse" – Spouse means a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a same-sex marriage or common law marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States if the marriage could have been entered into in at least one state.

"Parent" means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents "in law." "Health Care Provider" means:

- A. A Doctor of Medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices;
- B. A podiatrist, dentist, clinical psychologist, optometrist, or chiropractor (with limitations) authorized to practice in the state and performing within the scope of their practice;
- C. A nurse practitioner, nurse-midwife, clinical social worker, or physician assistant authorized to practice in the state and performing within the scope of their practice;
- D. A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or
- E. Any health care provider from whom the employer or the employer's group health plan's benefits manager will accept a medical certification to substantiate a claim for benefits.

"Key Employee" means a salaried employee who is among the highest paid ten percent of employees within 75 miles of the worksite.

Leave Coverage and 12-Month Period

A. Measuring the 12-Month Period – An eligible employee can take up to 12 weeks of FMLA leave during a 12-month period. Delaware County Community College will measure the 12-month period using a "rolling"

12-month period measured backward from the date the employee's first FMLA leave begins.

Under the "rolling" 12-month period, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.

Example 1: Michael requests three weeks of FMLA leave to begin on July 31st. The employer looks back 12 months (from July 31st back to the previous August 1st) to see if any FMLA leave had been used. Michael had not taken any previous FMLA leave, so he is entitled to the three weeks he requested and has nine more weeks available.

Example 2: Patricia requests two weeks of FMLA leave to begin on November 1st. The employer looks back 12 months (from November 1st back to the previous November 2nd) and sees that Patricia had taken four weeks of FMLA leave beginning January 1st, four weeks beginning March 1st, and three weeks beginning June 1st. Patricia has taken 11 weeks of FMLA leave in the 12-month period and only has one week of FMLA-protected leave available. After Patricia takes the one week in November, she can next take FMLA leave beginning January 1st as the days of her previous January leave "roll off" the leave year.

B. Accounting for Leave – Use of leave will normally be accounted for on an hourly basis. A full-time employee would thus be entitled to 480 hours of FMLA leave during the 12-month period.

Employee Request for Leave Procedures and Employer Designation

Family Medical Leave Act leave designation is the responsibility of Delaware County Community College. The College will determine FMLA eligibility and notify the employee that the leave will be designated as FMLA leave in accordance with the FMLA. The designation may be made either interpersonally, orally, or in writing. If given interpersonally or orally, it will be followed up in writing.

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 30 days in advance, then the employee will provide such notice when feasible. It is the employee's responsibility to notify their supervisor of the need for leave, providing the anticipated timing and duration of the leave, and to complete and submit the appropriate forms or paperwork. It is also the employee's responsibility to provide reasons for the leave to the employer to allow the employer to determine if the leave qualifies for FMLA leave.

The Vice President of Human Resources or designee may inquire further regarding the need for leave if the employee does not initially provide adequate information to determine if the leave request qualifies for FMLA leave designation.

The Vice President of Human Resources or designee will provide the employee with FMLA leave information and request forms to be completed by the employee and/or family member's health care provider. The employee should return the FMLA leave forms within 15 calendar days after the employee receives them. Information and FMLA leave forms will also be available through the Human Resources office and the College's web site.

Intermittent Leave

Under certain circumstances, an employee is entitled to take FMLA leave on an intermittent or reduced schedule basis. DCCC will permit employees to take intermittent or reduced schedule leave when there is a medical need for such leave for an employee's own serious health condition, to care for a spouse, parent, son, or daughter with a serious health condition, or to care for a covered servicemember with a serious injury or illness. An employee is also entitled to use intermittent or reduced schedule leave for qualifying exigencies.

If an employee needs leave intermittently or on a reduced schedule for planned medical treatment for their own serious health condition or for that of a qualifying family member, the employee must make a reasonable effort to schedule the treatment so as to not unduly disrupt the employer's operations.

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 FMLA 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.

Medical Certification

In certain circumstances, DCCC may require that an employee submit a certification to support the employee's need for FMLA leave.

The certification is a document or form that is completed by the employee and, as appropriate, a health care provider. The certification will allow DCCC to:

- Obtain information related to the FMLA leave request, including the likely periods of absences; and
- Verify that an employee, or the employee's ill family member, has a serious health condition (or, in the case of military family leave, that facts exist to support the employee's request for such leave).

It is the employee's responsibility to provide complete medical certification within 15 calendar days of the request or to provide a reasonable explanation of the delay. Failure to provide the requested certification may result in the denial of continuation of leave. Certification should be provided by using the appropriate form, which is available from the Human Resources office or a statement from your health care provider that provides the appropriate medical facts.

If the College has reason to question the medical certification, they 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 the College's 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.

DCCC may ask for recertification under the provisions of the FMLA. Recertifications are provided at the employee's expense.

Continuation of Benefits

During the 12-week approved FMLA-protected leave, the College will continue an employee's health and other benefits at the same level and under the same conditions as if the employee had continued to work. The eligible employee will be required to pay their portion of their health care and other benefit premiums during their FMLA leave absence.

During the 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.

If the employee on unpaid leave does not pay their share of premiums, the College may elect to discontinue coverage until payment of the employee's portion of the premium has been made.

Returning to Work

Upon returning to work after the employee's own FMLA leave qualifying illness, the employee may be required to provide a fitness for duty certification from the employee's health care provider. The fitness for duty certificate should be job related and consistent with business necessity. A fitness for duty certificate may or may not be required for intermittent FMLA leave, determined by Human Resources on a case-by-case basis.

When an employee returns from FMLA leave, they will be restored to the same job that the employee held when the leave began or to an "equivalent job." The employee is not guaranteed the actual job they held prior to the leave. An "equivalent job" means a job that is virtually identical to the original job in terms of pay, benefits, and other employment terms and conditions (including shift and location).

An employee on FMLA leave is not protected from actions that would have affected them if the employee was not on FMLA leave (i.e., layoff, reduction of hours, shift elimination, decrease in overtime, etc.).

DCCC may also deny restoration to a "key employee" if necessary to prevent substantial and grievous economic injury to its operations. A key employee is a salaried FMLA-eligible employee who is among the highest paid 10% of all employees, both eligible and not eligible, within 75 miles of the worksite.