



## FAMILY AND MEDICAL LEAVE ACT (FMLA) PROCEDURE

**Board Bylaw:**  
**Policy Number: 4.3110**  
**Subject Area: Personnel**  
**Adopted: 03/14/2024**  
**Revised: 03/14/2024**

A leave taken under this FMLA procedure must be a qualified leave reason as defined below.

This Procedure is designed to outline an employee's rights under the FMLA. Nothing in this procedure should be interpreted to diminish an employee's rights under the FMLA or the Department of Labor's corresponding regulations.

### **A. Qualified Leave Reasons**

The College will grant FMLA leave to eligible employees for the following reasons:

1. The employee's serious health condition which is defined as:
  - a. an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider; and
  - b. the condition prevents the employee from performing the essential functions of the employee's job.
2. Pregnancy or pregnancy-related conditions prevent the employee from performing the essential functions of her position.
3. The birth of a child and to bond with the newborn child within one year of birth.
4. 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.
5. Care of the employee's spouse, child, or parent with a serious health condition which is defined as:
  - a. an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition; and
  - b. the condition prevents the qualified family member from participating in school or other daily activities.
6. A "qualifying exigency" relating to the active-duty status or call to active-duty in the Armed Forces or National Guard or Reserves of a spouse, son, daughter, or parent of the employee. Qualifying exigencies include:
  - a. issues arising from short-notice deployment (i.e., seven or less days of notice) for up to seven days.
  - b. to attend military events and related activities.
  - c. to arrange for childcare, or provide childcare on an urgent basis, or for school activities.
  - d. to make financial or legal arrangements to address a military member's absence.
  - e. to attend counseling for the employee, the military member, or a child of the military member for issues that arise from the covered active duty or call to active duty.
  - f. to spend time with the service member while on short-term leave for up to five days.
  - g. for post-deployment activities for a period of 90 days following the termination of the covered military member's active-duty status; and
  - h. other events that the employee and College agree is a qualifying exigency.
7. Care is required for a child, parent, spouse or next of kin who is a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, or is otherwise in outpatient status on the temporary disability retired list as a result of a serious injury or illness incurred in the line of duty on active. A serious injury or illness may also result from the aggravation of a pre-existing condition in the line of duty on active duty. A serious injury or illness is defined as one that may render the service member medically unfit to perform the duties of the member's office, grade, rank or rating.
8. Care is required for a child, parent, spouse or next of kin who is a recent veteran as a result of a serious injury or illness incurred in the line of duty on active. The veteran's discharge must have been other than dishonorable and occurred within a five-year period prior to the date the leave is to begin. Serious injury or illness is defined for a veteran as:
  - a. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the servicemember's office, grade, rank, or rating; or

- b. 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% or more and the need for care is related to that condition; or
- c. a physical or mental condition because of a disability or disabilities related to military service that substantially impairs the veteran's ability to work, or would do so absent treatment; or
- d. an injury for which the veteran is enrolled in the Department of Veterans' Affairs Program of Comprehensive Assistance for Family Caregivers.

Pursuant to FMLA regulations, "spouse" under this Policy means a husband or wife as defined or recognized in the state where the individual was married, including common law marriage or same-sex 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.

## **B. Compensation and Benefits During Family and Medical Leave**

1. Unused leave days (sick leave, compensatory, vacation, personal days) must be used concurrently with FMLA. When leave days have been exhausted, an employee on FMLA may request approval for a withdrawal of days from the Sick Leave Bank, following Sick Leave Bank guidelines, if they are an eligible participant. Requests for Sick Leave Bank days can only be made if the leave is for their own serious medical condition. The employee on leave will work with Human Resources to request a withdrawal of days from the Sick Leave Bank. Any portion of the FMLA period for which leave, or Sick Leave Bank days are not available will be unpaid.

## **C. Eligibility for Family and Medical Leave of Absence**

1. To be eligible for FMLA leave under this policy, an employee must have been employed by the College for at least 12 months and must have worked at least 1,000 hours during the 12 month period preceding the commencement of the leave of the FMLA leave.

## **D. Certification Procedure (non-military)**

1. Every request for FMLA leave pursuant to this policy must include completion of the appropriate documents and delivery of any required supporting documents.
2. To request leave for an employee's own serious health condition, form WH-380-E must be completed by the employee's health care provider. The employee must submit the written medical certification within 15 calendar days of the date the certification is requested by Kaskaskia College.
3. In its discretion, and at its own expense, the College may require a second medical opinion after an employee submits a medical certification. If the second medical opinion differs from the original medical certification, the College may require the employee to submit to examination by a third physician, the identity of whom will be agreed upon by the College and the employee requesting the leave of absence. The College may require periodic recertification by an employee's medical care provider when the College in its discretion deems recertification is warranted.
4. To request leave for the serious health condition of a qualified family member, form WH-380-F must be completed by the employee and the family member's health care provider. The employee must submit the written medical certification within 15 calendar days of the date the certification is requested by Kaskaskia College.
5. FMLA certification forms are available by contacting Human Resources.

## **E. Certification Procedures (military caregiver or qualified exigency)**

1. Every request for FMLA leave pursuant to this policy must include completion of the appropriate certification document and delivery of any required supporting documents.
2. To request leave for a "qualifying exigency" due to a spouse, son, daughter, or parent's active-duty service, an employee is required to complete form WH-384 and submit the form along with supporting documents within 15 calendar days of the date the certification is requested by Kaskaskia College.
3. To request leave to care for an injured service member (defined as spouse, child, parent or "next of kin") form WH-385 must be completed by the employee and the family member's health care provider. The employee must submit the written medical certification within 15 calendar days of the date the certification is requested by Kaskaskia College.
4. FMLA certification forms are available by contacting Human Resources.

## **F. Approval/Denial of Leave**

1. Once the College is aware of the request for FMLA, a "Notice of Eligibility and Rights and Responsibilities" form will be provided to the employee to establish eligibility and request additional documentation, if necessary, to determine whether the leave qualifies under FMLA. Once sufficient documentation is provided, the College will designate the requested leave accordingly within five business days through the "Designation Notice" form, absent extenuating circumstances.

## **G. Conditions of Family and Medical Leave**

The following conditions apply to FMLA leave pursuant to this policy:

1. In its discretion, the College may require an employee taking an approved leave of absence to periodically report on his or her status and intention to return to work.
2. The College may contact the provider to authenticate or clarify information contained in the medical certification. Additionally, the College may contact the appropriate unit of the Department of Defense to confirm that the covered military member is on active duty or call to active-duty status.
3. An employee taking an approved leave of absence may not work for another employer performing the same or similar duties that the employee's medical certification form states he or she is unable to perform. If an employee engages in the same or similar duties for another employer that have been restricted by a medical provider during the leave of absence, the employee will be considered to have violated the terms of the leave of absence, and to have voluntarily terminated his or her employment with the College.

4. If an employee is granted FMLA leave on an intermittent basis or on a reduced schedule basis, the College may require the employee to temporarily transfer to an alternative position that accommodates the employee's recurring absences or part time schedule.

5 Spouses that are both employed by the College are entitled to 12 weeks of leave in total, rather than 12 weeks leave of absence each (or 26 weeks in total in the case of caring for a covered service member) if the leave is for the birth or care of a child, the placement of a child for adoption or foster, or a qualifying military exigency.

6. If at the time of applying for FMLA leave the employee intends not to return to work or decides not to return to work after completion of the leave of absence the employee will be liable to and required to reimburse the College for the cost of payments made to maintain the employee's benefits during an unpaid portion of the leave of absence, unless the failure to return to work was due to the recurrence or onset of a serious health condition, or was otherwise beyond the employee's control. If the employee decides not to return to work, they have the ability to continue any health insurance coverage for 18 months from the date benefits are terminated under COBRA.

7. Engaging in fraud, misrepresentation or providing false information to the College or any health care provider is prohibited. If an employee is found to have engaged in this behavior, they may be subject to discipline, up to and including termination. If the employee is terminated, the employee would not be eligible to continue health insurance under COBRA.

#### **H. Conditions if on FMLA to Care for Injured Service Member under National Defense Authorization Act**

1. The law provides that leave taken under this section is only available during a single 12-month period. Additionally, employees who utilize this provision are eligible for a combined total of 26 weeks of FMLA leave. For example, an employee who, in a single 12-month period, has already taken 12 weeks of FMLA leave for the birth of a child would be entitled to only 14 additional weeks to care for a "covered service member." For example, when both husband-and-wife work for the same employer, the total amount of available leave to which both are entitled is limited to a combined total of 26 workweeks. In addition, the provisions under numbers G1, 2, 3, 4, 6 and 7 above apply to this section.

#### **I. Benefits**

During a period of family and medical leave, an employee's health, dental, vision, and basic life insurance benefits will be maintained under the same conditions that applied before the leave commenced. Kaskaskia College will continue to pay the employer portion of the premium. During any period of unpaid FMLA leave, the employee will be responsible for paying the employee-paid portion of any insurance premiums presently paid by payroll deduction. An employee on unpaid family and medical leave will not accrue vacation, sick, personal, and holiday paid time off leave during the period of unpaid leave.

If the employee fails to return to work or, returning to work, does not continue in employment for at least 30 days following the conclusion of the leave, the employee may be required to reimburse the Kaskaskia College for payment of the employer's portion of the premiums paid during the family leave. This provision will be waived if the reason for continued absence is the continuation of the serious health condition whereby the employee is prevented from performing the employee's job, or circumstances beyond the employee's control. Certification of such conditions may be required by Kaskaskia College.

If the employee is enrolled in the Medical Care and/or Dependent Care flexible spending account programs, the Internal Revenue Service rules governing these plans at the time of the leave will apply.

#### **J. Return From an Approved Family and Medical Leave of Absence**

1. Upon returning from an approved FMLA leave granted as a result of an employee's own serious health condition, an employee must present written medical certification from his or her medical care provider stating that he or she is able to perform the essential functions of his or her job with or without reasonable accommodation. At that time, the College will place the employee in his or her former position. If the former position is not available, the employee will be placed in an equivalent position with equivalent compensation and benefits. If an employee does not return to work on the agreed date, the employee will be considered to have voluntarily terminated his or her employment. If leave extends beyond 12 weeks, the employee can request leave under the Sick Leave Bank policy or Leave of Absence Policy if eligible.

With respect to "highly paid" or "key" employees, there may be circumstances where no positions are available upon the expiration of his or her leave of absence. In such circumstances, the employee will be terminated from the College. A "key" or "highly paid" employee is a salaried Kaskaskia College employee who is among the highest paid 10 percent of those Kaskaskia College employees (salaried or hourly) working within 75 miles of the College location at which the employee is assigned.

Approved: March 14, 2024