

FAMILY AND MEDICAL LEAVE

Policies and Procedures: F-I-d,7

STATEMENT AND AUTHORITY

The Family and Medical Leave Act of 1993 (FMLA) entitles qualified employees up to 12 weeks of unpaid leave within a specified 12 month period, for specified reasons. It is the intent of McLennan Community College (MCC) that the provisions of this policy comply with the Family and Medical Leave Act, and any terms used from the FMLA will be as defined in the Act or the U.S. Department of Labor ("DOL") regulations. To the extent that this policy is ambiguous or contradicts the Act or DOL regulations, the language of the Act or regulations will prevail.

ELIGIBILITY

An eligible employee is an employee of MCC who:

1. has been employed by MCC for at least 12 months, and
2. has been employed for at least 1,250 hours of service during the 12 month period preceding the commencement of leave.

PROVISIONS

A. Leave entitlement

An eligible employee is entitled to 12 weeks in a 12 month period. MCC chooses the fiscal year method for determining the 12 month period.

B. Circumstances for leave

An eligible employee is entitled to FMLA leave under the following circumstances:

1. For the birth of a son or daughter, and to care for the newborn child;
2. For placement with the employee of a son or daughter for adoption or foster care;
3. To care for the employee's spouse, son, daughter or parent with a serious health condition; and
4. Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.

Leave for serious health conditions may be taken intermittently or on a reduced leave schedule when that type of scheduling is medically necessary.

C. Compensated leave

An eligible employee must exhaust all paid leave before the employee can take unpaid leave unless approved by the President or his/her designee.

D. Benefits

During any FMLA leave, MCC will maintain the employee's health insurance coverage under the Employee Retirement System of Texas on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

An employee may choose not to retain all health coverages (e.g. family member coverage, dental) during FMLA leave. However, when an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc.

Except as required by the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) and for "key employees," MCC's obligation to maintain health benefits under FMLA ceases when an employee informs MCC of his or her intent not to return from leave, fails to return from leave, or exhausts FMLA leave entitlement. A key employee is an employee who is salaried, and is "among the highest paid 10 percent" of the employees employed within 75 miles of his or her worksite.

While on FMLA leave, employees are entitled to the state contribution and may keep all the coverages they had while working, except disability coverages. Payment of out-of-pocket health plan premiums must continue to be paid by the employee during the FMLA leave period. MCC will provide the employee with advance written notice of the terms and conditions under which these payments must be made.

Action resulting from the failure of an employee to make payments will be governed by the appropriate laws and regulations applicable during the period of leave.

An employee is not entitled to accrue paid vacation, personal, or medical/sick leave, or time for tenure purposes while in a FMLA leave status. However, benefits accrued at the time leave began will be available upon the employees return from leave.

E. Return to work

If the employee is ready to return from FMLA leave before the scheduled date for return, the employee is to notify MCC as soon as practical to request reinstatement.

An employee is entitled to be returned to an equivalent position with equivalent benefits, pay and other terms and conditions of employment, provided the employee is qualified to perform the essential functions of the position, as defined by provisions of the Americans with Disabilities Act and presents a fitness for duty certification as set forth in "F" below. The employee has no right to return to the same position.

A "key employee" may be denied reinstatement upon completion of FMLA. The determination of whether a salaried employee is a "key employee" will be made at the time of the request for leave. The appropriate laws and regulations will be applied in making the determination of "key employees" and their disposition upon return of FMLA leave.

F. Certification

Eligible employees will be required to furnish medical certification for a serious health condition. Employees granted FMLA leave based on a serious health condition will be required to present a fitness-for-duty certification prior to reinstatement.

If MCC finds reason to doubt the validity of the certification, MCC may require, at its own expense, a second medical opinion from a health care provider designated or approved by MCC but not regularly employed by MCC. Should the second opinion differ from the original certification provided by the employee, MCC, at its own expense, may require that the employee obtain a third opinion. The opinion of the third health care provider, designated or approved by both MCC and the employee, is final and binding on both MCC and the employee.

PROCEDURES

Requests for FMLA must be submitted on MCC's Request for Leave form for the President's approval thirty days in advance of a foreseeable need for FMLA leave and within two days of an unforeseen need for FMLA leave. This form must be processed through the appropriate channels and signed by the President.

Upon approval of a request for FMLA leave the Human Resources Office and the employee will complete a MCC Employer Response to Employee Request for Family or Medical Leave in accordance with applicable regulations at the time of the request.

USE OF LEAVE

1. Employees will be required to take all of their accumulated paid leave, including approved leave from Catastrophic Illness or Injury fund and/or approved advanced sick leave, as part of their 12 weeks FMLA leave. If an employee has less than 12 weeks of accrued paid leave, the rest of the leave will be unpaid. Employees must substitute any accrued paid leave for any unpaid FMLA leave, as permitted by the FMLA regulations. Upon exhaustion of any accrued paid leave, the remainder of any FMLA leave will be unpaid. In no case will the combination of paid and unpaid leave used for an FMLA purpose exceed twelve (12) workweeks in any twelve (12) month period as defined herein.
2. FMLA leave for the birth/care of a child or for the placement of a child for adoption or foster care must be taken within the twelve (12) month period which starts on the date of such birth or placement. Regardless of when such leave begins, it will end no later than the end of the twelve (12) month period. Unless specifically permitted, FMLA leave for these purposes

cannot be taken on an intermittent or reduced leave schedule. If both spouses are employed by the College, they are limited to a combined total of twelve (12) workweeks of FMLA leave during any twelve (12) month period for purposes described in paragraphs B1 and B2 above. However, each employee may use up to twelve (12) workweeks of FMLA leave during any twelve (12) month period if the leave is for the purposes described in paragraphs B3 or B4 above.

3. Employees who are receiving temporary disability benefit payments or workers' compensation benefits are not required to use paid leave while on FMLA leave. If the employee remains on FMLA leave after these benefits end, the employee will then be required to use available paid leave before using unpaid leave.
4. For employees who work part-time or variable hours, the FMLA leave duration is calculated on a pro rata or proportional basis.
5. Sick leave may only be taken in situations when such leave would normally be permitted.
6. FMLA leave runs concurrently with vacation leave or other paid or unpaid sick leave or other leave when the reasons for those leaves meet the FMLA criteria.
7. Employees may not be required to use compensatory time as part of an FMLA leave. If an employee chooses to use compensatory time, that time will not count as part of the 12 weeks of FMLA entitlement, although it may fall in the middle of an FMLA leave.
8. When a holiday falls during a week, the week counts as a full week of FMLA leave. However, when the College is closed for 5 consecutive working days or longer, such as the December holidays, those days will not count as FMLA time.
9. Subject to the limitations and certifications allowed by the FMLA, leaves taken under paragraphs B3 or B4 above may be taken intermittently or on a reduced leave schedule when medically necessary, provided a health care provider certifies the expected duration and schedule of such leave and provided further that where such leave is foreseeable based upon planned medical treatment. The employee may be required or may elect to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave than the employee's regular position.
10. Employees on leave are required to report periodically (once a week is recommended) on their status and their intention to return to work. Employees should be encouraged to keep their supervisors informed about their intention to return to work.