

CONCORDIA COLLEGE

Policy and Procedure Manual

Subject: Family and Medical Leave
Section: Benefits
Number: 3.11

Effective Date: December 1, 2009
Applies To: All Employees

Purpose

To outline the provisions and procedures for requesting and designating leave under the Family and Medical Leave Act (FMLA).

Policy

Concordia College will grant up to 12 weeks of leave (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid, or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

Types of Leave Covered

To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

- 1) *The birth and care for a newborn child.*
- 2) *The placement of a child with the employee for adoption or foster care and to care for the newly placed child.*
- 3) *To care for a spouse, child or parent with a serious health condition.*
- 4) *The serious health condition of the employee.*

An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

A serious health condition is defined as a condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing treatment by a licensed health care provider.

Generally, an employee whose condition requires continuing treatment must first visit the health care provider within seven days of the onset of the incapacity. Any second visit must occur within 30 days of the incapacity in order for the two visits to be considered "continuing treatment" and entitle the employee to leave under this policy. Alternatively, the employee may visit the health care provider within seven days of the onset of the incapacity and then undergo a regimen of continuing treatment under the supervision of the health care provider in order to be eligible for FMLA leave under this policy. This policy also covers chronic illnesses and those of a long-term nature. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the College may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

- 5) *Qualifying exigency leave for families of [military service members](#)*

An FMLA-eligible employee may take a Military Exigency Leave if the qualified exigency is related to or caused by the employee's spouse, , child or parent's active military duty or call to active military duty in the United States, National Guard, Reserves, or in any branch of the United States Armed Forces. The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military events and activities, 3) child care and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.

6) *Military caregiver leave (also known as covered service member leave) to care for an ill or injured service member.*

FMLA-eligible employees may take Military Caregiver Leave to care for a spouse, child, parent or next of kin ("qualified family member") who is a member of the United States Armed Forces and who is undergoing medical treatment, recuperation or therapy, is in outpatient status, or on the temporary disability retire list, for an injury or illness that was incurred by the member in the line of duty while on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty while on active duty in the Armed Forces), and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.

Next of kin is defined as the closest blood relative of the injured or recovering service member or the single blood relative designated by the service member as the next of kin.

This leave may also be used for the care of an employee's qualified family member who is a veteran. For the purpose of this leave, a veteran is defined as "a person who served in the active military, Naval, or Air Service, and who was discharged or released therefrom under conditions other than dishonorable." The veteran must have been a member of the Armed Forces at some point in the five years preceding the date on which the veteran undergoes the medical treatment or receives the therapy that necessitates the leave.

The maximum period of leave for Military Caregiver Leave is up to 26 weeks of leave in a 12-month period. Military Caregiver Leave is generally a one-time entitlement, and has a special 12-month leave period which begins on the first day the employee takes Military Caregiver Leave. Additional Military caregiver Leave is available, however, if the military family member sustains a later injury or illness or for the injury or illness of a different military family member. When both spouse work for the College they are limited to a combined total of 26 weeks of Military Caregiver Leave.

Amount of Leave

An eligible employee can take up to 12 weeks for the FMLA circumstances (1) through (5) listed above under "Types of Leave Covered". The College will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the College will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee can take up to 26 weeks for the FMLA circumstance (6) above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the College

will measure the 12-month period measured forward from the first day the employee takes Military Caregiver Leave. If a husband and wife both work for the College and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the husband and wife may each take a combined total of 12 weeks of leave. If a husband and wife both work for the College and each wishes to take leave to care for a covered injured or ill service member, the husband and wife each may only take a combined total of 26 weeks of leave.

While an employee is on leave, the College will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If the employee chooses not to return to work 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 College will require the employee to reimburse the College the amount it paid for the employee's health insurance premium during the leave period.

Use of Accrued Benefits

An employee who is taking FMLA leave because of the employee's own serious health condition, the serious health condition of a family member, or to care for an ill or injured service member must use all accrued vacation, sick time, and banked hours prior to taking the remainder of the FMLA leave unpaid.

Disability leave for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA. An employee who is taking leave for the birth, adoption or foster care of a child and the leave does not qualify as a serious health condition, the employee must use all accrued vacation and banked hours prior to taking the remainder of the FMLA leave unpaid.

An employee who is using military FMLA leave for a qualifying exigency must use all accrued vacation and banked hours prior to taking the remainder of the FMLA leave unpaid.

Procedures/Guidelines

Qualifying for Family or Medical Leave

The employee must have worked for the College for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week.

The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave will not be counted in determining the 1,250 hours eligibility test for an employee under FMLA. However, an employee returning from fulfilling his or her National Guard or Reserve military obligation shall be credited with the hours of service that would have been performed *but for* the period of military service in determining whether the employee worked the 1,250 hours of service.

Employee Status and Benefits during Leave

Under current College policy, the employee pays a portion of the health care premium. While on paid leave, the College will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Human Resources Office by the 1st day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The employer will provide 15 days' notification prior to the employee's loss of coverage.

The College will continue making payroll deductions for enrolled benefits while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums. If the employee does not continue these payments, the College will discontinue coverage during the leave.

Employee Status After Leave

An employee who takes leave for their own serious health condition under this policy must provide report of workability clearance from the health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms, unless the employee would have been terminated for reasons unrelated to the leave (for example, position elimination), or if the employee can no longer perform the essential functions of the job. The position will be the same or one which is virtually identical in terms of pay, benefits and working conditions. The College may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

Intermittent Leave or a Reduced Work Schedule

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member over a 12-month period).

The College may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

For the birth, adoption or foster care of a child, the College and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the College before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

Certification for the Employee's Serious Health Condition

The College may require certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition.

Form: <http://www.dol.gov/esa/whd/forms/WH-380-E.pdf>

The College may directly contact the employee's health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. The College will not use the employee's direct supervisor for this contact. Before the College makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the employee must grant his or her health care provider permission to clarify individually identifiable health information for the College.

The College has the right to ask for a second opinion if it has reason to doubt the certification. The College will pay for the employee to get a certification from a second doctor, which the College will select. The College may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the College will require the opinion of a third doctor. The College and the employee will mutually select the third doctor, and the College will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

Certification for the Family Member's Serious Health Condition

The College may require certification for the family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition.

Form: <http://www.dol.gov/esa/whd/forms/WH-380-F.pdf>

The College may directly contact the employee's family member's health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. The College will not use the employee's direct supervisor for this contact. Before the College makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the employee's family member must grant his or her health care provider permission to clarify individually identifiable health information for the College.

The College has the right to ask for a second opinion if it has reason to doubt the certification. The College will pay for the employee's family member to get a certification from a second doctor, which the College will select. The College may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the College will require the opinion of a third doctor. The College and the employee will mutually select the third doctor, and the College will pay for the opinion. This third opinion will be considered final. The employee will be

provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

Certification of Qualifying Exigency for Military Family Leave

The College will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave.

Form: <http://www.dol.gov/esa/whd/forms/WH-384.pdf>

Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave

The College will require certification for the serious injury or illness of the covered servicemember. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Servicemember

Form: <http://www.dol.gov/esa/whd/forms/WH-385.pdf>

Recertification

The College may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days and only when circumstances have changed significantly, or if the employee receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the College may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. The College may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

Procedure for Requesting FMLA Leave

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the Benefits/Compensation Coordinator. Within five business days after the employee has provided this notice, the Benefits/Compensation Coordinator will complete and provide the employee with the DOL Notice of Eligibility and Rights

Form: <http://www.dol.gov/esa/whd/fmla/finalrule/WH381.pdf>

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the College's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

Designation of FMLA Leave

Within five business days after the employee has submitted the appropriate certification form, the HR manager will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice

Form: <http://www.dol.gov/esa/whd/forms/WH-382.pdf>

Intent to Return to Work From FMLA Leave

On a basis that does not discriminate against employees on FMLA leave, the College may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

History: Effective 1998; Revised 11/01/2009; Revised, 12/01/2009