

Applies to: Faculty, staff, student employees

Responsible Office

Human Resources

POLICY STATEMENT

In accordance with federal law, the college provides job protected Family and Medical Leave (FML) to eligible faculty, staff and student employees for up to 12 work weeks (480 hours) of leave during a 12-month period based on qualifying events. Eligible faculty, staff and student employees that care for covered service members are eligible for up to 26 work weeks of leave in a single 12-month period.

Purpose of the Policy

To ensure compliance with the *Family and Medical Leave Act (FMLA)* and consistent application to all college employees.

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Definitions

Term	Definition
Covered active duty	In the case of a member of a regular component (not National Guard or Reserves) of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty (not a State call) under a provision of law referred to in section 101(a)(13)(B) of Title 10, United States Code. This is only applicable in cases of exigency.
Covered service member	Member of the Armed Forces (including a member of the 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 covered veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.
Covered veteran	An individual who was discharged or released under conditions other than dishonorable at any time during the five year period prior to the first date the eligible employee takes FML leave to care for the covered veteran.

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Term	Definition
Eligible employee to care for covered service member	Immediate family member or next of kin of a covered service member who meets all eligibility criteria.
Employee	Faculty, staff, and student employees.
Equivalent position	A position with the same pay, benefits, and working conditions, the same or similar responsibilities and duties and requiring substantially equivalent skill, effort, responsibility and authority.
Health care providers	Must be licensed by the state to deliver health care services in order to certify FML. Health care providers may be a doctor of medicine, osteopathy, dentist, clinical psychologist, social worker, physician assistant, optometrist, podiatrist, chiropractor, nurse practitioner, nurse mid-wife or Christian Science practitioner who certify within the scope of their practice.
Immediate family	Any one of the following: <ol style="list-style-type: none"> 1. Spouse or domestic partner; 2. Biological, adoptive, step- or foster parent; 3. An individual who stood <i>in loco parentis</i> to an employee when the employee was a child; 4. Biological, adopted, step- or foster child, a legal ward or a child of a person standing in loco parentis to the child, who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.
<i>In loco parentis</i>	A relationship in which a person has put him or herself in the situation of a parent by assuming and discharging the obligations of a parent to a child with whom he or she has no legal or biological connection.
Intermittent and reduced schedule leave	Leave taken in nonconsecutive blocks of time rather than for one continuous period of time, which may include leave periods from a tenth of an hour or more to several weeks. Reduced schedule leave is a reduction in the usual number of working hours per day or week for a period of time for reasons relating to FML.
Leave	Paid or unpaid time used while employee is on FML.
Next of Kin	As defined in 29 CFR 825.122.
Parent of a covered service member	An employee who is the biological, adoptive, step- or foster father or mother; or her/his domestic partner or any other individual who stood in loco parentis to a covered service member. This term does not include parents-in-law.
Recovering service member	Member of the Armed Forces who suffered an injury or illness while on active duty that may render the person unable to perform the duties of the member's office, grade, rank or rating.
Serious health condition	An illness, injury, impairment, or physical/mental condition that meets any one of the following: <ol style="list-style-type: none"> 1. Inpatient care in a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care. 2. Continuing treatment by a health care provider that consists of a period of incapacity for more than three consecutive days, that also involves treatment two or more times within a thirty-day period by a health care provider, absent extenuating circumstances, or treatment at least once by a health care provider which results in a regimen of continuing treatment. An eligible employee must have an in-person visit to the health care provider within seven days of the first day of incapacity. 3. Periods of incapacity related to pregnancy and childbirth, including prenatal care. 4. Chronic conditions which require visits for treatment by a health care provider at least twice a year; continues over an extended period of time (including recurring episodes of a condition); and may cause episodic periods of incapacity (e.g. diabetes, epilepsy), permanent/long -term conditions (e.g. Alzheimer's, terminal cancer), or multiple treatments (e.g. chemotherapy, dialysis).

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Serious illness or injury – covered service member	Injuries or illnesses that exist before the beginning of the member’s active duty and were aggravated by service in the line of duty on active duty in the Armed Forces.
Serious illness or injury – covered veteran	Injuries or illnesses incurred by the covered veteran in the line of duty on active duty in the Armed Forces or that existed before the veteran’s active duty and was aggravated by service in the line of duty and that is either: <ol style="list-style-type: none"> 1. A continuation of serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member’s office, grade, rank rating; or 2. A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-related disability rating of 50 percent or greater and the need for military caregiver leave is related to that condition; or 3. A physical or mental condition that substantially impairs the veteran’s ability to work because of a disability(s) related to military service or would do so absent treatment; or 4. An injury that is the basis for the veteran’s enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.
Son or daughter of a covered service member	Employee’s biological, adopted, or foster child, stepchild, legal ward; biological, adopted, or foster child, stepchild, legal ward of a domestic partner or spouse; or a child for whom the service member stood in loco parentis and who is of any age.
Son or daughter on covered active duty or call to covered active duty status	Employee’s biological, adopted, or foster child, stepchild, legal ward biological, adopted, or foster child, stepchild, legal ward of a domestic partner or spouse, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status and who is of any age.
Twelve month period	Rolling 12-month period measured backward from the date the FML commences.

Policy Details

I. Eligibility requirements

- A. Faculty, staff and student employees are eligible for FML if they meet all of the following:
 1. Been employed for at least 12 months. Employee service breaks of seven years or less will have the previous time of employment counted towards the 12-month eligibility requirement. Service breaks by employees of seven years or more due to their fulfillment of National Guard or Reserve military service obligations will have this time counted toward the 12-month eligibility requirement. The college will comply with the Uniformed Services Employment and Reemployment Rights Act (USERRA) when determining an employee’s eligibility for FML.
 2. Worked 1250 hours for the 12-month period immediately preceding the commencement of leave (60.1% FTE or greater for the entire 12-month period).
 3. Incur a qualifying event.
 4. Document relationships
 - a. For purposes of confirmation of family relationship, the college may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship.
 - b. For purposes of confirmation of a domestic partnership completed Affidavit of Domestic Partnership form must be on file with the Office of Human Resources.

II. Employee leave entitlements

- A. **Eligible employees** have job protected time off for up to 12 workweeks for the following qualifying events:
 1. A **serious health condition** of the employee that prevents the employee from performing his or her job as certified by a **health care provider**;
 2. Birth of a child;
 3. Placement with the employee of a child for adoption or foster care;
 4. Care for a child during the first year following birth, adoption or foster care placement.;

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5. Care for an **immediate family member** who has a serious health condition as certified by a health care provider; or
 6. A qualifying exigency as defined in 29 CFR 825.126 arising out of the fact that the employee's spouse, domestic partner, parent, son, or daughter is on **covered active duty** in a foreign country or called to covered active duty status or has been notified of an impending call to active duty in a foreign country. A qualifying exigency includes:
 - a. short notice deployment;
 - b. military and other activities related to call to covered active duty;
 - c. childcare and school activities;
 - d. parental care leave;
 - e. make or update financial and legal arrangements;
 - f. counseling that arises out of the military service;
 - g. rest and recuperation;
 - h. post-deployment activities;
 - i. additional activities—must be agreed to by the supervisor, the employee and the Office of Human Resources.
- B. Eligible employees have job protected time off for up to 26 workweeks under Military Service Member Leave for the following qualifying events:
1. The employee is an eligible family member or **next of kin**; and
 2. The covered service member is:
 - a. Undergoing medical treatment, recuperation, or therapy;
 - b. In outpatient status;
 - c. On the temporary disability retired list, for a **serious injury or illness** incurred in the line of duty or an existing injury or illness aggravated in the line of duty; or
 - d. A veteran undergoing medical treatment, recuperation or therapy for serious injury or illness incurred in the line of duty or aggravated in the line of duty that occurred any time during the five years preceding the date of treatment.
 3. This leave will not exceed 26 workweeks during a "single 12-month period." The calculation of the "single 12-month period" begins with the first day the eligible employee takes FML to care for the **covered service member** and ends 12 months after that date. If all leave is not taken, it is forfeited.
 4. This type of leave is not to care for former members of the Armed Forces, National Guard, and Reserves, or members who are on the permanent disability retired list except for veterans noted above in II.B2.d.
- C. Any leave taken for reasons stated in sections II.A and/or II.B will be designated as FML by the college. Any leave will be counted concurrently with any other designated paid or unpaid leave balances. The maximum FML may not exceed 26 workweeks for employees with qualifying events that pertain to both sections A and B in a single 12-month period.
- D. Employees on FML are still subject to a reduction in force or reassignment that would have occurred otherwise had the employee been working.
- III. Relationship to Paid or Unpaid Leave policies
- A. Any request to use sick or vacation for FML purposes must meet the specific requirements set forth by college policy.
 - B. Departments that maintain attendance guidelines may require employees to adhere to such guidelines when requesting sick or vacation leave for FML purposes.
 - C. An employee who requests to take FML based on the employee's, employee's immediate family member's covered service member's or **covered veteran's** serious health condition must exhaust available vacation and sick leave balances, as applicable, prior to the use of unpaid leave in accordance with Unpaid Leave Policy 2.6.33 and Paid Leave Policy 2.6.40. The college may waive this requirement in workers' compensation, short-term disability, and long-term disability cases.

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- D. Time taken will be counted concurrently toward both FML and the appropriate paid or unpaid leave. In the case of active duty or covered active duty FML, employees may use vacation or take an unpaid leave of absence.
 - E. In the case of birth or adoption additional leave may be used to maximize leave available pursuant to the college's leave policies.
- IV. Compliance and fraud
- A. The college will not interfere with an eligible employee's rights under the FMLA, and will not discharge or otherwise discriminate against employees who exercise such rights.
 - B. Employees failing to comply with FML policies and procedures may be denied use of FML. Falsification or use of FML for purposes other than as set forth by the FMLA are strictly prohibited and may result in disciplinary action, up to and including dismissal and reimbursement to the college of salary and wages paid during FML.
 - C. Staff are expected to comply with Policy 2.1.16, *Conflict of Interest and Work Outside the College*.

PROCEDURE

- I. Requirements for requesting Family and Medical Leave
- A. Employee notification
 - 1. When a qualifying status change is known or anticipated, verbal notice should be given as far in advance as possible, followed by written documentation submitted 30 days prior to the leave. Failure to follow timely notification procedures may result in the delay or denial of FML.
 - 2. When a qualifying event is immediate or unforeseen, notice should be given as soon as practical when the employee becomes aware of the need for leave.
 - 3. For any requested leave for treatment, reasonable efforts should be made by the employee to schedule appointments that avoid disrupting unit operations.
 - 4. An employee using intermittent leave due to medical necessity should notify his/her supervisor as soon as he/she knows that he/she will be unable to work, but in most circumstances, no later than the starting time of the employee's work in compliance with an employee's scheduled starting time, absent a department call-off procedure. An employee must notify his/her supervisor on each day of absence unless other arrangements have been made.
 - B. Documentation of a qualifying event
 - 1. A request for FML must be substantiated with satisfactory documentation provided within 15 calendar days of the request for leave.
 - a. If the leave is due to a serious health condition of the employee, the employee's immediate family member, or a covered service member/covered veteran, documentation must be submitted from an appropriate health care provider. Documentation will be either the Medical Certification of Health Care Provider for Employee's Serious Health Condition form or the Medical Certification of Health Care Provider for Family Member's Serious Health Condition.
 - b. If the leave is due to adoption, foster care placement, active duty leave, or a covered active duty leave, documentation must be submitted from the appropriate agency.
 - 2. Health care providers that are authorized to complete a certification for military caregiver leave for a covered service member may be a: United States Department of Defense (DOD) health care provider, United States Department of Veterans Affairs (VA) health care provider, DOD TRICARE network authorized private health care provider; DOD non-network TRICARE authorized private health care provider; or non-military-affiliated health care provider.
 - 3. If the certification is incomplete or unclear, the employee must be given seven additional calendar days in most circumstances to provide more complete information. If the certification is still insufficient, OHR may contact the employee's health care provider for clarification and/or authentication of the employee's medical certification or deny the FML request.

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4. The college reserves the right to request a second opinion if the validity of a medical certification is questioned. This is done at college expense. If the first and second opinions differ significantly, the Office of Human Resources may request that the employee obtain a final and binding third opinion of a jointly selected health care provider whose fee will be paid by the college. The department may request recertification when appropriate but generally not sooner than 30 days from the date of the last certification.
 5. The college may request second and third opinions of a covered veteran's serious injury or illness only when certification is provided by a non-military-affiliated health care provider.
 6. A Certification of Qualifying Exigency for Military Family Leave form must be submitted to Office of Human Resources within 15 calendar days of the request for leave, when applicable. Written documentation such as duty orders, dates of covered active duty service and date of commencement of exigency must be attached to the certification request.
 7. A Certification for Serious Injury or Illness of Covered Service member for Military Family form must be submitted to the Office of Human Resources within 15 calendar days of the request for leave, when applicable. Written documentation confirming that the covered service member's injury or illness was incurred in the line of duty or aggravated in the line of duty on active duty and that the service member is undergoing treatment for such injury or illness must be included with the form. The Office of Human Resources cannot request second/third opinions or re-certifications for leaves to care for a covered injured or ill service member.
 8. Upon return from leave for a personal serious health condition, the employee must present a dated fitness-for-duty/return-to-work certificate from the health care provider so long as notified of this requirement by OHR in the leave designation. The fitness-for-duty/return-to-work certificate must be dated and certify that the employee is able to return to work and can perform the essential functions of the job. The employee's return to work may be delayed until the certificate is submitted.
 9. Failure to follow timely notification procedures may result in the delay of denial of FML.
- II. Determination of eligibility
- A. OHR determines employee eligibility under FMLA
 - B. Notice of rights and responsibilities
 1. Upon notification by the employee of the need to take leave or recognition of a qualifying event, OHR must issue to the employee within five days a notice including the Notice of Eligibility and Rights and Responsibilities for potential eligibility of FML.
 2. The notice must include instructions for application of leave and one of the following forms:
 - a. Medical Certification of Health Care Provider for Employee's Serious Health Condition;
 - b. Medical Certification of Health Care Provider for Family Member's Serious Health Condition;
 - c. Certification of Qualifying Exigency for Military Family Leave; or
 - d. Certification for Serious Injury or Illness of Covered Service member for Military Family.
 - C. Leave designation
 1. Upon receipt of employee's documentation to support the leave request, OHR must review the documentation and determine if it meets the criteria for a qualifying event. OHR must issue an approval or denial Designation Notice (FML) form to employee within five business days.
 2. The leave designation must include any requests for fitness-for-duty/return-to-work certification.
 - a. For fitness-for-duty/return-to-work certifications, the leave designation must include a copy of the employee's position description. The health care provider will assess the employee's ability to perform the functions as specified in the position description.
 - b. Failure to notify the employee of the need for a fitness-for-duty certification will preclude its requirement.
- III. Calculation of available leave
- A. All leave requests that are FML qualifying status changes will be counted towards the 12-workweek or 26-workweek entitlement period.

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- B. FML balances are determined on a rolling 12-month period, measured backward from the date FML is to be used.
 - C. An eligible employee with a less than full-time appointment is entitled to 12 workweeks of FML based on the total number of hours worked per week. The amount per workweek is prorated based on the employee's FTE.
 - D. On request OHR must provide a current FML balance to the employee no sooner than every 30 days.
- IV. Options for taking Family Medical Leave
- A. Twelve weeks of FML may be taken all at once, intermittently or on a reduced-leave schedule as approved.
 - 1. After the first 12 workweeks of the qualifying event for birth, adoption or foster care placement, leave cannot be taken on an **intermittent or reduced schedule** without advance notice, scheduling and departmental approval.
 - 2. Intermittent leave may be taken in increments of one-tenth of an hour, daily or at weekly intervals. Arrangements for intermittent leave must be coordinated with the department.
 - 3. An employee's department must approve intermittent or a reduced schedule leave and arrangements for such leave must be coordinated with the department. Employees using intermittent or a reduced schedule leave must make a reasonable effort to avoid disrupting department operations, including scheduling doctor's appointments outside of work hours.
 - B. Only the amount of leave actually taken is counted toward the 12 or 26 workweeks of leave
 - C. An employee may be temporarily transferred to an alternative position with equivalent pay and benefits to accommodate intermittent or reduced schedule leave.
 - D. A department may arrange an alternative work schedule to accommodate an individual's care giving needs if the schedule satisfactorily meets the operational needs, function and mission of the department. Such an arrangement will not be considered FML unless or until FML is actually taken.
- V. Continuation of benefits
- A. While an employee is on paid FML, the employee's share contribution, if enrolled, for medical, dental, vision, and dependent group life insurance continues to be deducted from the employee's pay.
 - B. In accordance with Unpaid Leave Policy 2.6.33 faculty and staff will be billed for benefits contributions while on unpaid leave. Employees should contact the Office of Human Resources for information regarding benefits while on unpaid leave.
 - C. The employee will return to the same or an equivalent position with equivalent benefits, pay and other terms and conditions of employment.
 - 1. Benefits are subject to changes that occur within the group plan while the individual is on leave.
 - 2. If an employee is unable to fulfill the essential functions of the job as a result of a serious health condition, accommodations may be made in accordance with the Americans with Disabilities Act (ADA).
- VI. Recordkeeping
- A. OHR and Payroll maintain employee records of FML usage and balances. These records include a copy of the written notice provided to the employee, leave designation, medical documentation to support the absence, the letter approving or denying the leave, and the amount of FML used during the benefit year.
 - 1. All such records must be handled as confidential information and must be stored in a secure file separate from the personnel file.
 - 2. Records must be kept in accordance with the college's records retention procedures.

Responsibilities

Position or Office	Responsibilities
Office of Human Resources	<ol style="list-style-type: none"> 1. Ensure FMLA posting and notification requirements are met at the college level. 2. Consult with units and employees on the requirements and implementation of FML.

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Position or Office	Responsibilities
	<ol style="list-style-type: none"> 3. Investigate and issue findings and actions steps when violations of FML provisions occur. 4. Give employees an additional seven calendar days for incomplete or unclear documentation and contact the employee's health care provider for clarification and/or authentication of the medical certification or deny the request if certification is still insufficient. 5. Request recertification when appropriate and permitted under the law but generally not sooner than 30 calendar days from the date of last certification. 6. Determine employee eligibility under FMLA. 7. Issue notice of rights and responsibilities within five days of notification by the employee of the need to take leave or recognition of a qualifying event. The notice must include instructions for application and the appropriate form. 8. Review documentation to determine if it meets the criteria for a qualifying event and issue a leave designation within five days of receipt of the employee's documentation. The leave designation must include requests for fitness-for-duty/return-to-work certification. 9. Maintain employee records of FML usage and balances. These records are confidential and must be maintained separately from the personnel file and in accordance with the records retention schedule. 10. Upon request, provide current FML balance to the employee no sooner than every 30 days.
Department	<ol style="list-style-type: none"> 1. Approve intermittent or reduced schedule leave and arrangements. 2. Arrange non-FML alternate work schedules to accommodate employee's caregiving needs, if possible. 3. Upon employee's return to work, place employee in same or equivalent position with equivalent pay, benefits, and other terms and conditions of employment.
Employee Responsibilities	<ol style="list-style-type: none"> 1. Review FML policy to determine if eligible for FMLA-protected leave. Contact supervisor and OHR for eligibility and/or medical documentation questions. 2. For known or anticipated qualifying events, give notice as far in advance as possible, followed by written documentation submitted 30 calendar days prior to the leave. 3. For immediate or unforeseeable qualifying events, give notice as soon as practical. 4. Use reasonable efforts to schedule appointments that avoid disrupting unit operations 5. Notify supervisor for each absence prior to the employee's scheduled starting time, absent a department call-off procedure. 6. Provide satisfactory documentation within 15 calendar days of the request for leave. 7. If requested, provide more complete information within seven calendar days for incomplete or unclear documentation. 8. If requested, obtain a final and binding third opinion of a jointly selected health care provider. 9. Submit a dated fitness-for-duty/return-to-work certification to OHR if required. 10. Submit requests for intermittent or reduced schedule leave in a timely manner and schedule such leave in a manner that is least disruptive to the department.
Payroll Office	Maintain employee records of FML usage and balances.

Resources

I. Websites

- A. [American with Disabilities Act \(ADA\)](#)
- B. [Family Medical Leave Act \(FMLA\)](#)
- C. [FMLA-related Code of Federal Regulations](#)
- D. [Genetic Information Non-discrimination Act \(GINA\)](#)

II. Policies and notices

- A. [Conflict of Interest and Work Outside the College Policy 2.1.16](#)
- B. [Paid Leave Policy 2.6.40](#)
- C. [Student Employment Policy 2.2.05](#)
- D. [Unpaid Leave Policy 2.6.33](#)

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- E. [FMLA Flyer](#)
- III. Forms
 - A. [Certification of Domestic Partnership](#)
 - B. [Application for Leave form](#)
 - C. [Certification of Qualifying Exigency for Military Family Leave form](#)
 - D. [Certification of Serious Injury or Illness of Covered Service member for Military Family](#)
 - E. [Family and Medical Leave Designation Notice](#)
 - F. [Family and Medical Leave Notice of Rights and Responsibilities](#)
 - G. [Medical Certification of Health Care Provider for Employee’s Serious Health Condition](#)
 - H. [Medical Certification of Health Care Provider for Family Member’s Serious Health Condition](#)

Contacts

Subject	Office	Telephone	E-mail/URL
Policy	Office of Human Resources	740-366-9367	https://go.cotc.edu/hr
Benefits	Office of Human Resources	740-364-9550	https://go.cotc.edu/hr-benefits
Military or veteran issues	Office of Student Life	740-366-9441	https://go.cotc.edu/vets

History

Issued: 10/01/2004
 Revised: 04/21/2010
 Revised: 10/11/2013
 Edited: 11/13/2014
 Revised: 02/01/2015
 Edited: 11/06/2017 (purpose statement added)
 Edited: 03/19/2021 (links)