

## **5.4.15 Family and Medical Leave**

**Last Revised:** April 6, 2020

**Policy:** Piedmont Community College (PCC) complies with Federal law in regards to the requirements of Family and Medical Leave as provided by the Family and Medical Leave Act (FMLA) of 1993.

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### **Purpose/Definitions:**

#### **Purpose**

The Family and Medical Leave Act of 1993 was passed by Congress to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity; to minimize the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons; and to promote the goal of equal employment opportunity for women and men.

This Act provides reasonable job-protected (1) Family and medical leave for the birth of a child and to care for the newborn child; for the placement of a child with the employee for adoption or foster care; for the care of a child, spouse or parent who has a serious health condition; for the employee's own serious health condition; (2) Qualifying Exigency Leave for families of covered members and (3) Military Caregiver Leave (also known as Covered Service member Leave).

#### **Definitions**

**12-Month Period** - a period beginning July 1 of each year and ending on the following June 30. Employees must be given sixty (60) calendar days notice of any change and must not lose any benefits because of a transition.

**Child** - a son or daughter who is under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability and who is:

- a biological child;
- an adopted child;

- a foster child - a child for whom the employee performs the duties of a parent as if it were the employee's child;
- a step-child - a child of the employee's spouse from a former marriage;
- a legal ward - a minor child placed by the court under the care of a guardian; or
- a child of an employee standing in loco parentis.

**Health Care Provider** – a doctor of medicine or osteopathy who is authorized to practice medicine or surgery in the State of North Carolina or any other person determined by statute, credential or licensure to be capable of providing health care services.

**Intermittent Work Schedule** - a work schedule in which an employee works on an irregular basis and is taking leave in separate blocks of time, rather than for one continuous period of time, usually to accommodate some form of regularly scheduled medical treatment.

**Parent** - 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 son or daughter. The term parent does not include parents' in-law.

**Permanent Employee** - An employee who has been employed with PCC for at least twelve (12) months and who has worked at least 1040 hours during the previous 12-month period.

**Reduced Work Schedule** - a work schedule involving less hours than an employee is regularly scheduled to work.

**Serious Health Condition** - an illness, injury, impairment or physical or mental condition that involves:

- inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical facility, including any period of incapacity (defined to mean inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment for or recovery from, or any subsequent treatment in connection with such impairment;
- continuing treatment by a health care provider involving one or more of the following: a period of incapacity as defined above of more than 3 consecutive days, and any subsequent treatment or period of incapacity relating to the same condition that also involves;
- treatment two or more times by a health care provider, by a nurse or physician's assistant under the direct supervision of a health care provider, or a provider of health care services (e.g., physical therapist) under orders of, or on referral by a health care provider, or treat any period of incapacity requiring absence from work of more than 3 workdays that also involves continuing treatment by a health care provider;

- treatment on at least one occasion resulting in a regime of continuing treatment under the supervision of a health care provider (course of prescription medication or therapy requiring special equipment to alleviate the health condition);
- any period of incapacity due to pregnancy or for prenatal care, even when the employee or family member does not receive treatment from a health care provider during the absence and even if the absence does not last more than 3 calendar days (prenatal examinations, severe morning sickness);
- any period of incapacity or treatment due to a “chronic serious health condition” even when the employee or family member does not receive treatment from a health care provider during the absence and even if the absence does not last more than 3 calendar days, which is defined as requiring periodic visits or treatment by a health care provider, continuing over an extended period of time, and which may cause episodic rather than continuing periods of incapacity;
- incapacity for a permanent or long-term condition for which treatment may not be effective; or
- multiple treatments for restorative surgery or incapacity for serious conditions that would likely result in a period of incapacity of more than 3 consecutive days in the absence of medical intervention or treatment.

*Note: For a more exhaustive list of what constitutes a serious health condition please see Section 125.113 of the Family and Medical Leave Act of 1993.*

**Spouse** - a husband or wife recognized by the State of North Carolina

**Temporary Employee** – an employee whose position is not established in the budget as a regularly recurring position and is for brief periods (usually less than 9 months)

**Workweek** - the number of hours an employee is regularly scheduled to work each week, including holidays.

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**Approval Authority/Monitoring Authority:** PCC’s Board of Trustees has approval authority for this policy. The Vice President, Administrative Services/CFO has monitoring authority for this policy.

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**Procedure:**

Section 1: Eligible Employees

- a. Permanent Employees are entitled to a total of twelve (12) workweeks, paid or unpaid, leave during any 12-month period for one or more of the reasons listed below.
  - i. For the birth of a child and to care for the child after birth, provided the leave is taken within a 12-month period following birth.
  - ii. For the employee to care for a child placed with the employee for adoption or foster care provided the leave is taken within a 12-month period following placement.
  - iii. For the employee to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition; or
  - iv. Because the employee has a serious health condition that makes the employee unable to perform one or more essential functions of the employee's position.
- b. Leave without pay beyond the 12-week period or for employees not covered under the Family and Medical Leave Policy will be administered under the Other Types of Leave Without Pay Policy (5.4.3). Under these provisions, employees must pay for health benefits coverage.
- c. Temporary Employees are not covered by this policy since the maximum length of temporary appointment is nine months; however, if, by exception, a temporary employee is extended beyond one year, the employee will be covered if they had worked at least 1250 hours during the previous 12-month period.
  - i. Any leave granted to a temporary employee will be without pay.
  - ii. This procedure also applies to any other type of appointment that is not permanent, including intermittent, if the employee worked at least 1250 hours during the previous 12-month period.

Section 2: Leave Charges

- a. It is the responsibility of the College to designate leave as FMLA leave, based on information provided by the employee.
  - i. Designation of leave as FMLA leave must be done before the leave starts.
  - ii. If an employee has not provided information sufficient to determine whether leave is designated as FMLA leave, the College will, after a period of 10 workdays, request that the employee provide sufficient information to establish an FMLA-qualifying reason for the needed leave. This does not preclude the College from requesting the information sooner; at any time an extension is requested.
- b. FMLA runs concurrently with all other leave, with the exception of worker's compensation leave.
- c. Periods of leave without pay (including leave without pay while drawing short-term disability benefits) count towards the twelve (12) workweeks to which the employee is entitled.
- d. If an employee is out on workers' compensation leave drawing temporary total disability, the time away from work is not considered as part of the FMLA 12-week entitlement.
- e. The College cannot require an employee to use compensatory time for unpaid FMLA leave.
- f. The employee has the following options for charging leave:
  - i. Birth—the employee may choose to exhaust available vacation and/or sick leave, or any portion, or go on leave without pay; except that sick leave may be used only during the period of disability. This applies to both parents.
  - ii. Adoption/Foster Care—The employee may choose to exhaust annual leave, or any portion, a maximum of thirty (30) days sick leave (see 5.4.6(d)), or go on leave without pay.
  - iii. Illness of Child, Spouse, or Parent—the employee may choose to exhaust available sick and/or annual leave, or any portion, or go on leave without pay.

- iv. Employee's Illness—the employee will exhaust available sick leave and may choose to exhaust available annual leave, or any portion, before going on leave without pay. If the illness extends beyond the 60-day waiting period required for short-term disability, the employee may choose to exhaust the balance of available leave or begin drawing short-term disability benefits.

### Section 3: Amount of Leave and Qualifying Reasons for Leave

FMLA leave may be requested

- a. for the birth of a child and to care for the newborn child after birth, provided the leave is taken within a 12-month period following birth.
  - i. An expectant mother may take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work, or requires a reduced work schedule.
- b. for the placement of or to care for a child placed with the employee for adoption or foster care, provided the leave is taken within a 12-month period following placement.
  - i. FMLA leave must also be granted before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed.
- c. for the employee to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition.
- d. because the employee has a serious health condition that prevents the employee from performing one or more essential functions of the position.
- e. because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

- f. as Military Caregiver Leave (Covered Service Member Leave)
  - i. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of twenty-six (26) workweeks of leave during a single 12-month period (commencing on the on the date the employee first takes leave) to care for a covered service member who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation or therapy; or otherwise in outpatient status; or on the temporary disability retired list.
  - ii. If an eligible employee does not take all of his or her twenty-six (26) workweeks of leave entitlement to care for a covered service member during this “single 12-month period,” the remaining part of his or her 26 workweeks of leave entitlement to care the covered service member is forfeited.
  - iii. The 26-workweek entitlement is to be applied as a per-covered service member, per-injury basis such that an eligible employee may be entitled to take more than one period of twenty-six (26) workweeks of leave if the leave is to care for different covered service members or to care for the same service member with a subsequent serious injury or illness.
- g. During the single 12-month period, an eligible employee shall be entitled to a combined total of twenty-six (26) workweeks of leave under any condition listed above in parts a through f.

**Section 4: Intermittent Leave or Reduced Work Schedule**

- a. The employee may take leave intermittently or on a reduced schedule to care for the employee's child, spouse or parent who has a serious health condition, or because the employee has a serious health condition.
  - i. There is no minimum limitation on the amount of leave taken intermittently.
- b. If the leave is for child birth and birth related child care or for adoption, the College must agree to intermittent leave or a reduced work schedule.

- c. If intermittent leave is foreseeable, based on planned medical treatment, the College may require the employee 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.
- d. Only the time actually taken as leave may be counted toward the twelve (12) weeks of leave to which the employee is entitled when leave is taken intermittently or on a reduced leave schedule (For example, an employee normally works forty (40) hours each week. The employee is on a reduced work schedule of 20 hours per week. The FMLA leave may continue for up to twenty-four (24) calendar weeks.)
- e. If an employee works a reduced or intermittent work schedule and does not use paid leave to make up the difference between the normal work schedule and the new temporary schedule to bring the number of hours worked up to the regular schedule, the supervisor must submit in writing the change in the number of hours the employee is scheduled to work. This will result in an employee earning pay and leave at a reduced rate.

#### Section 5: Employee Responsibility for Notification

- a. The employee will give, in writing, notice to the supervisor for leave requested under this policy. The employee must explain the reasons for the needed leave so as to allow the College to determine that the leave qualifies under the Act.
  - i. Birth or Adoption—The employee will give Piedmont Community College no less than thirty (30) calendar days notice, in writing, of the intention to take leave, subject to the actual date of the birth or adoption. If the date of the birth or adoption requires leave to begin in less than thirty (30) calendar days, the employee will provide such notice as is practicable.
  - ii. Planned Medical Treatment—When the necessity for leave to care for the employee's child, spouse or parent or because the employee has a serious health condition, the employee must give thirty (30) calendar days notice if practicable of the intention to take leave. It is mandatory that the employee consult with the supervisor prior to the request for FMLA.

- iii. Medical Emergency—In the case of a medical emergency, an employer cannot require written advance notice.
- b. If the employee will not return to work after the period of leave, Piedmont Community College will be notified in writing. Failure to report at the expiration of the leave, unless an extension has been requested, may be considered as a resignation.

Section 6: Certification

- a. The employee shall provide a copy of the health care provider’s certification within the time frame requested by the College (which must be at least fifteen (15) calendar days) unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

Section 7: Certification Requirements

- a. Certification shall be sufficient if it states the following:
  - i. The date on which the serious health condition commenced
  - ii. The probable duration of the condition
  - iii. The appropriate medical facts within the knowledge of the health care provider regarding the condition
  - iv. When caring for a child, spouse or parent, a statement that the employee is needed and an estimate of the amount of time that such employee is needed
  - v. When for the employee’s illness, a statement that the employee is unable to perform the functions of the position
  - vi. When for intermittent leave, or leave on a reduced work schedule, for planned medical treatment, the dates on which treatment is expected and the duration
  - vii. When for intermittent leave, or leave on a reduced work schedule for the employee’s illness, a statement of the medical necessity for the arrangement and the expected duration

- viii. When for intermittent leave, or leave on a reduced work schedule, to care for a child, parent or spouse, a statement that the arrangement is necessary or will assist in their recovery and the expected duration
- b. For leave pursuant to this policy, the College may require that a claim for leave because of adoption be supported by reasonable proof of adoption.
- c. When the leave is foreseeable and at least thirty (30) calendar days notice has been provided, the employee should provide the medical certification before the leave begins.
- d. When it is not possible to provide the medical certification before the leave begins, the employee must provide the requested certification to the College within the time frame requested by the College (which must allow at least fifteen (15) calendar days after the College's request), unless it is not practicable under the circumstances.
- e. At the time the College requests certification, the College must also advise the employee of the anticipated consequences of and employee's failure to provide adequate certification. The College will also provide the employee a reasonable opportunity to correct any incomplete information.
- f. Medical Certification Form - Form WH-380, developed by the Department of Labor as an optional form for use in obtaining medical certification, including second and third opinions, may be used to provide certification.
  - i. A different form containing the same basic information may be used; however, no information in addition to that requested on Form WH-380 may be required.

#### Section 8: Validity of Certification

- a. If the College deems a medical certification to be incomplete or insufficient, the College must specify in writing what information is lacking, and give the employee 7 calendar days to cure the deficiency.
  - i. Where the College has reason to doubt the validity of the certification, the College may require the employee to get the opinion of a second doctor designated or approved by the College.
    - 1. Where the second opinion differs from the opinion in the original certification provided, the College may require the employee to get the opinion of a third doctor designated or approved jointly by the College and the employee.

- ii. The College may require that the employee get subsequent re-certifications no more often than thirty (30) calendar days.
  - iii. The second and third certification must be at the College's expense.
  - iv. The Certification of Health Care Provider form will be used for obtaining medical certification, including second and third opinions.
  - v. In no case, may the employee's direct supervisor contact the employee's health care provider.
- b. Second Opinion – If the College has reason to doubt the validity of a medical certification it may require the employee to obtain a second opinion with the following conditions:
- i. The College bears the expenses, including reasonable “out of pocket” travel expenses.
  - ii. The College may not require the employee or family member to travel outside normal commuting distance except in very unusual circumstance.
  - iii. Pending receipt of the second (or third) opinion, the employee is provisionally entitled to FLMA leave.
  - iv. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave.
  - v. The College is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the College unless the College is located in an area where access to health care is extremely limited.
- c. Third Opinion - If the opinions of the employee's and the College's designated health care providers differ, the College may require the employee to obtain certification from a third health care provider, again at the College's expense.
- i. This third opinion shall be final and binding.
  - ii. The third health care provider must be designated or approved jointly by the College and the employee.
- d. The College is required to provide the employee, within 2 business days, with a copy of the second and third medical opinions, where applicable, upon request by the employee.

Section 9: Recertification of Medical Conditions

- a. The College may request recertification no more often than every thirty (30) calendar days unless
  - i. an extension is requested, circumstances described by the previous certification have changed significantly, or
  - ii. the College receives information that casts doubt upon the employee's stated reason for the absence
- b. If the minimum duration specified on a certification is more than thirty (30) calendar days, the College may not request recertification until that minimum duration has passed unless one of the conditions above is met.
- c. When the duration of a condition is described as "lifetime" or "unknown," the College may request recertification of an ongoing condition every six months in conjunction with an absence.
- d. The employee must provide the requested recertification to the College within the time frame requested by the College (which must allow at least fifteen (15) calendar days after the College's request), unless it is not practicable under the particular circumstances.
- e. Any recertification requested by the College shall be at the employee's expense unless the College provides otherwise.
  - i. No second or third opinion on recertification may be required.

Section 10: Certification Requirements for Military Caregiver Leave

- a. Required information from the health care provider:
  - i. When leave is taken to care for a covered service member with a serious injury or illness, the College may require an employee to obtain a certification completed by an authorized health care provider of the covered service member.
  - ii. If the authorized health care provider is unable to make certain military-related determinations outlined below, the authorized health care provider may rely on determinations from an authorized DOD representative (such as a DOD recovery care coordinator).

- iii. The College may request that the health care provider provide the following information:
  - 1. The name, address, and appropriate contact information (telephone number, fax number, and/or email address) of the health care provider, the type of medical practice, the medical specialty
  - 2. Whether the covered service member's injury or illness was incurred in the line of duty on active duty
  - 3. The approximate date on which the serious injury or illness commenced, and its probable duration
  - 4. Information sufficient to establish that the covered service member is in need of care and whether the covered service member will need care for a single continuous period of time, including any time for treatment and recovery, and an estimate as to the beginning and ending dates for this period of time
  - 5. If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment appointments for the covered service member, whether there is a medical necessity for the covered service member to have such periodic care and an estimate of the treatment schedule of such appointments
  - 6. If an employee requests leave on an intermittent or reduced schedule basis to care for a covered service member other than for planned medical treatment (e.g., episodic flare-ups of a medical condition), whether there is a medical necessity for the covered service member to have such periodic care, which can include assisting in the covered service member's recovery, and an estimate of the frequency and duration of the periodic care

**Section 11: Intent to Return to Work**

- a. The College may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

- i. The College's policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation.
- b. If an employee gives unequivocal notice of intent not to return to work, the College's obligations under FMLA to maintain health benefits (subject to COBRA requirements) and to restore the employee cease. However, these obligations continue if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.
- c. It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have changed and the amount of leave originally anticipated is no longer necessary.
  - i. An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave.
  - ii. In both of these situations, the College may require that the employee provide the College reasonable notice (i.e., within 2 business days) of the changed circumstances where foreseeable. The College may also obtain information on such changed circumstances through requested status reports.

#### Section 12: Fitness for Duty Certification

- a. The College may enforce uniformly-applied policies or practices that require all similarly-situated employees who take leave to provide a certification that they are able to resume work.
- b. The College may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job.
- c. Where reasonable job safety concerns exist, the College may require a fitness-for-duty certification before an employee may return to work when the employee takes intermittent leave.

Section 13: Employment and Benefits Protection

a. Reinstatement

- i. The employee will be reinstated to the same position held when the leave began or one of like pay grade, pay, benefits and other conditions of employment.
- ii. PCC may require the employee to report to the College at reasonable intervals on the employee's status and intention to return to work.
- iii. The College also may require that the employee provide certification that the employee is able to return to work.

b. Benefits

- i. The employee will be reinstated without loss of benefits accrued when the leave began.
- ii. No benefits will be accrued during the period of leave without pay.

c. Health Benefits

- i. The College will maintain coverage for the employee under the State's group health plan for the duration of leave at the level and under the conditions coverage would have been provided if the employee had continued employment.
- ii. Any share of health plan premiums that an employee had paid prior to leave must continue to be paid by the employee during the leave period.
- iii. The obligation to maintain health insurance coverage stops if an employee's premium payment is more than thirty (30) calendar days late.
- iv. If the employee's failure to make the premium payments leads to a lapse in coverage, the employer must still restore the employee, upon return to work, to the health coverage equivalent to that the employee would have had if leave had not been taken and the premium payments had not been missed without any waiting period or pre-existing conditions.

- v. The College may recover the premiums if the employee fails to return after the period of leave to which the employee is entitled has expired for a reason other than the continuation, recurrence or onset of a serious health condition or other circumstances beyond the employee's control.

#### Section 14: Interference with Rights

- a. Actions prohibited—It is unlawful to interfere with, restrain or deny any right provided by this policy or to discharge or in any other manner discriminate against an employee for opposing any practice made unlawful by this policy.
- b. Protected Activity—It is unlawful to discharge or in any other manner discriminate against any employee because the employee does any of the following:
  - i. Files any civil action or institutes or causes to be instituted any civil proceeding under or related to this policy.
  - ii. Gives, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided by this policy.
  - iii. Testifies, or is about to testify, in any inquiry or proceeding relating to any provided under this policy.

#### Section 15: Enforcement

- a. A violation of or denial of leave requested pursuant to the Family and Medical Leave Act of 1993 is not a contested case and creates no right of grievance or appeal under the State Personnel Act.
- b. Violations can result in any of the following and are enforced by the U.S. Secretary of Labor:
  - i. U.S. Department of Labor investigation, or
  - ii. Civil liability with the imposition of court cost and attorney's fees, or

- iii. Administrative action by the U.S. Department of Labor.

## Section 16: Posting and Recordkeeping Requirements

### a. Posting

- i. Agencies are required to post and keep posted, in a conspicuous place, a notice explaining the FMLA provisions and providing information concerning the procedures for filing complaints of violations of the Act with the U.S. Department of Labor, Wage and Hour Division.
- ii. Copies of the required notice may be obtained from local offices of the Wage and Hour Division.
- iii. When an employee provides notice of the need for FMLA leave, the College will provide the employee with notice detailing the specific expectations and obligations of the employee and explaining the consequences of a failure to meet these obligations. *Note: Copies of the required notice may be obtained from local offices of the Wage and Hour Division.*

### b. Records

- i. The College is required to keep records for no less than 3 years and make them available to the Department of Labor upon request.
- ii. In addition to the records required by the Fair Labor Standards Act, the agency must keep records of:
  - 1. dates FMLA leave is taken
  - 2. hours of leave if less than a full day
  - 3. copies of employee notices
  - 4. documents describing employee benefits
  - 5. premium payments of employee benefits
  - 6. records of any disputes
- iii. Records and documents relating to medical certifications, recertification or medical histories of employees or employees' family members, created for

purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if ADA is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements, except that:

1. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations.
2. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment.
3. Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request

Section 17: Families First Coronavirus Response Act (See **Appendix A—Leave Comparison Table (Federal Emergency)** for a visual description of the options for this leave)

a. Federal Emergency Paid Sick Leave

- i. Conditions for use: A college must provide paid sick time to an employee to the extent that the employee is unable to work or telework because:
  1. The employee is subject to governmental quarantine or isolation order related to COVID-19.
  2. A health care provider has advised the employee to self-quarantine due to concerns related to COVID-19.
  3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
  4. The employee is caring for an individual subject to an order described in the Emergency Paid Sick Leave (Emergency Sick Leave) or has been advised as described in Emergency Family and Medical Leave (Emergency FMLA).
  5. The employee is caring for a child due to a school or childcare facility being closed or unavailable.
  6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

ii. Eligible Employees

This leave is available for immediate use by the employee, regardless of how long the employee has been employed by the college.

iii. Amount of Emergency Sick Leave Hours

1. Full-time employees are entitled to eighty (80) hours of Emergency Sick Leave.
2. Part-time employees are entitled to a number of hours equal to the number of hours that such employee works, on average, over a two week period.
3. This leave does not carry over from one year to the next.

iv. Rates of Pay

1. If an employee uses Emergency Sick Leave for reasons (1), (2), or (3) above, the employee is paid at their regular rate of pay, subject to a \$511 per day cap (\$5,110 aggregate)
2. If an employee uses Emergency Sick Leave for reasons (4), (5), or (6) above, the employee is paid at 2/3 of their regular rate of pay, subject to a \$200 per day cap (\$2,000 aggregate).

v. Relationship to Other Leave

A college cannot require an employee to use other paid leave provided by the college prior to the employee using Emergency Sick Leave.

b. Federal Emergency FMLA

i. Conditions for Use

A college must provide an employee paid Emergency FMLA in the following situation: The employee is unable to work or telework due to a need to care for a child under eighteen (18) years of age if a school or place of care has been closed or is unavailable due to a public health emergency.

ii. Eligible Employees

Full or part-time employees who have been employed with a college for at least thirty (30) calendar days.

iii. Amount of Emergency FMLA Time

An employee can take twelve (12) total weeks.

v. Rates of Pay

1. The first 10 days **may** consist of unpaid leave, but an employee can elect to use the new Emergency Sick leave or any other leave the employee has during the first 10 days.
2. The next ten weeks are paid at a rate of not less than 2/3 of the employee's regular rate of pay, times the number of hours the employee would normally be scheduled to work, **subject to** a \$200 per day cap (\$10,000 aggregate).

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**Legal Citation:** Family and Medical Leave Act of 1993; Families First Coronavirus Response Act (FFCRA) – effective April 1, 2020 through December 31, 2020;

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**History:** Effective July 1994; Revised October 2001, January 2013, April 2020

### Appendix A—Leave Comparison Table (Federal Emergency)

Employee Situation	Is the Employee Eligible for Paid Leave	
	Federal Emergency Sick Leave	Federal Emergency FMLA
The employee is subject to governmental quarantine or isolation order related to COVID-19.	<p><b>YES</b></p> <p>Up to 80 hrs at the regular rate of pay, capped at \$511 per day.</p>	<b>NO</b>
A health care provider has advised the employee to self-quarantine due to concerns related to COVID-19.	<p><b>YES</b></p> <p>Up to 80 hrs at the regular rate of pay, capped at \$511 per day.</p>	<b>NO</b>
The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.	<p><b>YES</b></p> <p>Up to 80 hrs at the regular rate of pay, capped at \$511 per day.</p>	<b>NO</b>
The employee is caring for an individual subject to a governmental quarantine or isolation order related to COVID-19.	<p><b>YES</b></p> <p>Up to 80 hrs, at a rate of 2/3 of the regular rate of pay, capped at \$200 per day.</p>	<b>NO</b>

	<b>Is the Employee Eligible for Paid Leave</b>	
<b>Employee Situation</b>	<b>Federal Emergency Sick Leave</b>	<b>Federal Emergency FMLA</b>
The employee is caring for an individual whose health care provider has advised to self-quarantine due to concerns related to COVID-19.	<p align="center"><b>YES</b></p> <p>Up to 80 hrs, at a rate of 2/3 of the regular rate of pay, capped at \$200 per day.</p>	<p align="center"><b>NO</b></p>
The employee is caring for a child due to a school or childcare facility being closed or unavailable.	<p align="center"><b>YES</b></p> <p>Up to 80 hrs, at a rate of 2/3 of the regular rate of pay, capped at \$200 per day.</p>	<p align="center"><b>YES</b></p> <p>Up to 12 weeks. First two weeks can be unpaid.</p> <p>Paid at no less than 2/3 of the regular rate of pay, capped at \$200 per day; \$10,000 aggregate cap.</p>
The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.	<p align="center"><b>YES</b></p> <p>Up to 80 hrs, at a rate of 2/3 of the regular rate of pay, capped at \$200 per day.</p>	<p align="center"><b>NO</b></p>
The employee is a “high risk” individual who cannot telework.	<p align="center"><b>NO</b></p>	<p align="center"><b>NO</b></p>

	<b>Is the Employee Eligible for Paid Leave</b>	
<b>Employee Situation</b>	<b>Federal Emergency Sick Leave</b>	<b>Federal Emergency FMLA</b>
The employee <sup>1</sup> cannot telework because their position duties cannot be performed remotely and reasonable alternative remote work is not feasible or productive.	<b>NO</b>	<b>NO</b>

<sup>1</sup> CDEP stands for the existing OSHR Communicable Disease Emergency Policy.

Note: Employee refers to “non-essential” employees in this case. Spouses do not appear to be included.