

5.4.15 Family and Medical Leave

Last Revised: August 2023

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.

Purpose/Definitions:

Purpose

The purpose of this policy is to provide implementation procedures for the Family and Medical Leave Act of 1993 which 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 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 with no biological relationship to the employee
- 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 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 three 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 three 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 three 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 three 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 three 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 nine months).

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

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.

Procedure:

Section 1: Eligible Employees

- 1.1. Permanent Employees are entitled to a total of 12 workweeks, paid or unpaid, leave during any 12-month period for one or more of the reasons listed below.
 - 1.1.1. 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.
 - 1.1.2. 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.
 - 1.1.3. 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
 - 1.1.4. 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.
- 1.2. 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.
- 1.3. 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 the individual worked at least 1250 hours during the previous 12-month period.
 - 1.3.1. Any leave granted to a temporary employee will be without pay.
 - 1.3.2. 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

- 2.1. It is the responsibility of the College to designate leave as FMLA leave, based on information provided by the employee.
 - 2.1.1. Designation of leave as FMLA leave must be done before the leave starts.

- 2.1.2. 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.
- 2.2. FMLA runs concurrently with all other leave, with the exception of paid parental leave per N.C.G.S. 128-8.6 and worker's compensation leave.
- 2.3. Periods of leave without pay (including leave without pay while drawing short-term disability benefits) count towards the 12 workweeks to which the employee is entitled.
- 2.4. 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.
- 2.5. The College cannot require an employee to use compensatory time for unpaid FMLA leave.
- 2.6. The employee may choose to exhaust available sick and/or annual leave, or any portion, or go on leave without pay.

Section 3: Amount of Leave and Qualifying Reasons for Leave

- 3.1. FMLA leave may be requested
 - 3.1.1. 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.
 - 3.1.1.1. An expectant mother may take FMLA leave before the birth of the child for prenatal care or if the pregnancy condition makes the employee unable to work or requires a reduced work schedule.
 - 3.1.2. 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.
 - 3.1.2.1. 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.

- 3.1.3. for the employee to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition.
- 3.1.4. because the employee has a serious health condition that prevents the employee from performing one or more essential functions of the position.
- 3.1.5. 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.
- 3.1.6. as Military Caregiver Leave (Covered Service Member Leave)
 - 3.1.6.1. 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 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 the employee is undergoing medical treatment, recuperation or therapy; or otherwise in outpatient status; or on the temporary disability retired list.
 - 3.1.6.2. If an eligible employee does not take all of the 26 workweeks of leave entitlement to care for a covered service member during this "single 12-month period," the remaining part of the 26 workweeks of leave entitlement to care for the covered service member is forfeited.
 - 3.1.6.3. 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 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.
- 3.1.7. During the single 12-month period, an eligible employee shall be entitled to a combined total of 26 workweeks of leave under any condition listed above in items 3.1.1 through 3.1.6.

Section 4: Intermittent Leave or Reduced Work Schedule

- 4.1. 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.
- 4.2. There is no minimum limitation on the amount of leave taken intermittently.
- 4.3. If the leave is for childbirth and birth related child care or for adoption, the College must agree to intermittent leave or a reduced work schedule.
- 4.4. 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.
- 4.5. Only the time actually taken as leave may be counted toward the 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 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 24 calendar weeks.)
- 4.6. 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 FMLA Notification Requirements

- 5.1. When the leave is foreseeable and at least 30 calendar days' notice has been provided, the employee must contact the Office of Human Resources and Organizational Development (HROD) to complete required forms (FMLA and college leave forms).
- 5.2. When it is not possible to submit forms (FMLA and college leave forms) before the leave begins, the employee must follow-up with the Office of HROD within 15 calendar days unless it is not practicable under the circumstances.

Section 6: Employment and Benefits Protection

6.1. Reinstatement

- 6.1.1. 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.
- 6.1.2. PCC may require the employee to report to the College at reasonable intervals on the employee's status and intention to return to work.
- 6.1.3. The College also may require that the employee provide certification that the employee is able to return to work.

6.2. Benefits

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

6.3. Health Benefits

- 6.3.1. 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.
- 6.3.2. 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.
- 6.3.3. The obligation to maintain health insurance coverage stops if an employee's premium payment is more than 30 calendar days late.
- 6.3.4. 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.
- 6.3.5. 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 7: Interference with Rights

- 7.1. 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.
- 7.2. Protected Activity—It is unlawful to discharge or in any other manner discriminate against any employee because the employee does any of the following:
 - 7.2.1. Files any civil action or institutes or causes to be instituted any civil proceeding under or related to this policy.
 - 7.2.2. Gives, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided by this policy.
 - 7.2.3. Testifies, or is about to testify, in any inquiry or proceeding relating to any provided under this policy.

Section 8: Enforcement

- 8.1. 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.
- 8.2. Violations can result in any of the following and are enforced by the U.S. Secretary of Labor:
 - 8.2.1. U.S. Department of Labor investigation, or
 - 8.2.2. Civil liability with the imposition of court cost and attorney's fees, or
 - 8.2.3. Administrative action by the U.S. Department of Labor.

Section 9: Posting and Recordkeeping Requirements

- 9.1. Posting
 - 9.1.1. 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.

- 9.1.2. 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.
- 9.1.3. Copies of these required notices may be obtained from local offices of the Wage and Hour Division.

9.2. Records

- 9.2.1. The College is required to keep FMLA records for no less than 3 years and make them available to the Department of Labor upon request.
- 9.2.2. In addition to the records required by the Fair Labor Standards Act, the agency must keep records of:
 - 9.2.2.1. dates FMLA leave is taken
 - 9.2.2.2. hours of leave if less than a full day
 - 9.2.2.3. copies of employee notices
 - 9.2.2.4. documents describing employee benefits
 - 9.2.2.5. premium payments of employee benefits
 - 9.2.2.6. records of any disputes
- 9.2.3. 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 the Americans with Disabilities Act (ADA) is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements, except that:
 - 9.2.3.1. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations.
 - 9.2.3.2. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment.

- 9.2.3.3. Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

Legal Citation: [Family and Medical Leave Act of 1993](#), N.C.G.S 126-8.6, [1C SBCCC 200.100](#)

History: Effective July 1994; Revised October 2001, January 2013, April 2020, June 2023, August 2023

Cross references PCC Policy 5.4.3 Other Types of Leave Without Pay Policy.