

3357:13-16-78 FAMILY AND MEDICAL LEAVE (FML) POLICY

(A) North Central State College will provide up to 12 weeks (480 hours) of leave (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious health condition) during a rolling 12-month period, measured backward, to eligible employees. Employees shall use accrued sick time, then accrued vacation, then unused personal time concurrent with FML. If the employee does not have sufficient accrued time, FML will be unpaid.

(B) Definitions

- (1) 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.
- (2) 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.
- (3) 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.
- (4) Eligible employee to care for covered service member - A spouse, parent, son, daughter or next of kin of a covered service member who meets all eligibility criteria.
 - (a) The “next of kin” of a current service member is the nearest blood relative, other than the current service member’s spouse, parent, son, or daughter, in the following order of priority:
 - (i) A blood relative who has been designated *in writing* by the service member as the next of kin for FML purposes
 - (ii) Blood relative who has been granted legal custody of the service member
 - (iii) Brothers and sisters
 - (iv) Grandparents
 - (v) Aunts and uncles
 - (vi) First cousins
 - (b) When a service member designates in writing a blood relative as next of kin for FML purposes, that individual is deemed to be the service member’s only FML next of kin. When a current service member has not designated in writing a next of kin for FML

purposes, and there are multiple family members with the same level of relationship to the service member, all such family members are considered the service member's next of kin and may take FML leave to provide care to the service member.

- (5) 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. Benefits are subject to changes that occur within the group plan while the individual is on leave. 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).
- (6) 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 or 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.
- (7) Immediate family - An employee's spouse, children (son or daughter), and parents are immediate family members for purposes of FML.
 - (a) Spouse, as defined in the statute, means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under State law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either (1) was entered into in a State that recognizes such marriages or, (2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.
 - (b) The term "parent" does not include a parent "in-law."
 - (c) The terms son or daughter do not include individuals age 18 or over unless they are "incapable of self-care" because of a mental or physical disability that limits one or more of the "major life activities" as those terms are defined in regulations issued by the Equal Employment Opportunity Commission (EEOC) under the Americans With Disabilities Act (ADA). Son or daughter not only includes a biological or adopted child, but also a foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis. In loco parentis is commonly understood to refer to a person who has put him/herself in the situation of a lawful parent by assuming the obligations incident to the parental relation without going through the formalities necessary to legal adoption. It embodies the two ideas of assuming the parental status and discharging the parental duties.
- (8) Intermittent and reduced schedule leave - Intermittent leave is taken in nonconsecutive blocks of time rather than for one continuous period of time, which may include leave periods from 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 FMLA. To use intermittent or reduced leave, there must be a medical need that is most effectively accommodated through this process.

- (9) Leave - Paid or unpaid time used while employee uses FMLA.
- (10) Parent of a covered service member - An employee who is the biological, adopted, step or foster father or mother; or any other individual who stood in loco parentis to a covered service member. This definition does not include parents-in-law.
- (11) 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.
- (12) Serious health condition - An illness, injury, impairment or physical/mental condition that meets any one of the following:
 - (a) 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.
 - (b) Continuing treatment by a health care provider - consists of a period of incapacity for more than three full consecutive days and 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.
 - (c) Periods of incapacity due to pregnancy and childbirth, including prenatal care.
 - (d) Chronic conditions - 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).
- (13) 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.
- (14) 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:
 - (a) 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
 - (b) 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

- (c) 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
 - (d) An injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.
- (15) Son or daughter of a covered service member - Employees's biological, adopted or foster child, stepchild, legal ward; or a child for whom the service member stood in loco parentis and who is of any age.
- (16) Son or daughter on covered active duty or call to covered active duty status - Employee's biological, adopted or foster child, stepchild, legal ward; 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.
- (17) Twelve month period - Rolling 12 month period measured backward from the date the FML commences.

(C) Eligibility Requirements

- (1) Faculty and staff are eligible for FML if they meet all of the following:
- (a) 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.
 - (b) Worked 1,250 hours in the 12 month period immediately preceding the commencement of leave.
 - (c) All periods of absence from work due to or necessitated by Uniformed Services Employment and Reemployment Rights Act (USERRA) covered service is counted in determining an employee's eligibility for FML. Employees on paid or unpaid military leave are eligible for FML as appropriate.
 - (d) A qualifying event.

(D) Leave Entitlements

- (1) Eligible employees have job protected time off as follows:
- (a) Up to 12 workweeks for the following qualifying events:
 - (i) Serious health condition that prevents an employee from performing his or her job as certified by a health care provider.
 - (ii) Birth of a child.
 - (iii) Placement with the employee of a child for adoption or foster care.

- (iv) Care for a child during the first year following birth, adoption or foster care placement.
 - (v) Care for an immediate family member who has a serious health condition as certified by a health care provider.
 - (vi) A qualifying exigency arising out of the fact that the employee's family member (spouse, parent, son or daughter) is on covered active duty in a foreign country or has been notified of an impending call to active duty in a foreign country. A qualifying exigency includes:
 - (a) Short notice deployment – call/order to covered active duty seven days prior to date of deployment.
 - (b) Military and other activities related to call to covered active duty.
 - (c) Childcare and school activities – e.g. arrange for alternative childcare, enroll child in new school or day care, attend meetings with school or day care staff and provide childcare on urgent or immediate need basis.
 - (d) Parental care leave – to provide care on an immediate need basis for the military member's parent who is incapable of self-care, e.g., admitting or transferring the parent to a care facility, attending meetings with staff at a care facility, etc.
 - (e) Make or update financial and legal arrangements.
 - (f) Counseling that arises out of the military service.
 - (g) Rest and recuperation – limited to 15 days per leave to spend with military member on short-term leave.
 - (h) Post-deployment activities – leave to attend post-deployment functions such as arrival ceremonies, reintegration briefings, funeral arrangements that occur within 90 days following termination of covered active duty status.
 - (i) Additional activities – must be agreed to by the supervisor, the employee and the Director of Human Resources.
- (b) Up to 26 workweeks – Military Service Member Family Leave if:
- (i) The employee is an eligible family member or next of kin.
 - (ii) The covered service member is:
 - (a) Undergoing medical treatment, recuperation or therapy,
 - (b) In outpatient status or
 - (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.
 - (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.
 - (iii) 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.

- (iv) Eligible employees may not take this type of leave 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 2d.
- (v) Any leave taken for reasons stated in sections A and/or B will be designated as FML. 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.

(E) Relationship to Paid or Unpaid Leave

- (1) Employee on FML due to the employee's or employee's family member's serious health condition must exhaust available sick leave, vacation leave and personal leave (in that order) prior to using unpaid FML. This leave time, whether paid or unpaid, will run concurrently with FML.
- (2) Employee on FML due to the birth of their child must exhaust available sick leave, vacation leave and personal leave (in that order) prior to using unpaid FML for postpartum recovery/bonding. This leave time, whether paid or unpaid, will run concurrently with FML.
- (3) Employee on FML to care for a child during the first year following adoption or foster care placement must use vacation leave. If the employee has insufficient or no vacation leave to cover the period of FML, time off will be unpaid. Leave must conclude within 12 months of adoption or placement, whichever is applicable.
- (4) In the case of active duty or covered active duty FML, employees may use vacation leave or take an unpaid leave of absence.
- (5) FML and workers' compensation leave will run concurrent, provided the reason for the absence is due to a qualifying serious illness or injury. Employee may use sick leave or take an unpaid leave of absence.

(F) Compliance and Fraud

- (1) 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.
- (2) Employees failing to comply with FML policies and procedures may be denied use of FML. Use of FML for purposes other than as set forth by the FMLA or falsification 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.
- (3) Engaging in employment outside the College, consulting, or the like and/or secondary employment, consulting or the like while on FML or sickness and disability leave will be cause for termination unless specifically approved in advance in writing by the College's Director of Human Resources.

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