



Family Medical Leave Act (FMLA)

Family Medical Leave Act (FMLA) Policy

Approved by and date:

Board of Trustees 06/19/2017

Executive Leadership Team 05/15/2017

Policy:

Kilgore College (KC) complies with the Family and Medical Leave Act (FMLA) of 1993 (as amended).

Procedures:

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Overview

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave, for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Notification of the need for FMLA must be presented to the Human Resources Director either through the immediate supervisor or the employee. A written certification from a health care provider for an employee's serious health condition or family member's serious health condition is required for absences of more than three calendar days from work. FMLA begins on the first day of absence.

Eligible Employees

Only eligible employees are entitled to take FMLA leave. An **eligible employee** is one who:

- a. Works for Kilgore College (KC);
- b. Has worked for KC for at least 12 months;
- c. Has at least 1,250 hours of service during the 12 month period immediately preceding the leave;
and
- d. Works at a location where KC has at least 50 employees within 75 miles.

Leave Entitlement

Kilgore College uses a "rolling" 12-month period measured backward from the date an employee uses FMLA leave. Under this method, each time an employee takes FMLA leave the remaining leave would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months. All FMLA leave must be taken in quarter hour increments.

Eligible employees may take up to 12 workweeks of leave in a 12-month period for one or more of the following reasons:

- a. **The birth of a child and to bond with the newborn child within one year of birth.**

An employee's entitlement to FMLA leave for birth and bonding expires 12 months after the date of birth. Both mothers and fathers have the same right to take FMLA leave for the birth of a child. Birth and bonding leave must be taken as a continuous block of leave unless the employer agrees to allow intermittent leave. (e.g., allowing a parent to return to work on a part-time schedule for 10 weeks).

b. The placement with the employee of a child for adoption or foster care and to bond with the newly placed child within one year of placement.

FMLA leave may be taken 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. FMLA leave to bond with a child after placement must be taken as a continuous block of leave unless the employer agrees to allow intermittent leave. An employee's entitlement to FMLA leave for the placement of a child for adoption or foster care expires 12 months after the placement.

c. A serious health condition that makes the employee unable to perform the functions of his or her job.

An employee is "unable to perform the functions of the position" where the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position. "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves: any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or a period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or any period of incapacity due to pregnancy, or for prenatal care; or any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or, any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

- 1) An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.
- 2) An employee who suffers from a serious health condition that does not prevent him or her from performing the essential functions of the position is not entitled to FMLA leave. Similarly, an employee who cannot perform one or more of the essential functions of the position, but whose condition does not meet the statutory and regulatory definition of a serious health condition, is not entitled to FMLA leave.

d. To care for the employee's spouse, son, daughter, or parent who has a serious health condition.

An employee must be needed to provide care for his or her spouse, son, daughter, or parent because of the family member's serious health condition in order for the employee to take FMLA leave. An employee may be needed to provide care to the family member, for example

- 1) when the family member is unable to care for his or her own medical, safety or other needs, because of the serious health condition or needs help in being transported to the doctor; or
- 2) to provide psychological comfort and reassurance to the family member with a serious health condition.

Generally, an employee is not entitled to FMLA leave to care for other family members with serious health conditions, such as siblings, grandparents, grandchildren, or parents-in-law.

Exceptions may arise where the employee can document the existence of an *in loco parentis* relationship. For example, an employee may take FMLA leave to care for an aunt or uncle with a serious health condition if the aunt or uncle stood *in loco parentis* to the employee when the employee was a child.

e. **Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty.**

Qualifying exigencies are situations arising from the military deployment of an employee's spouse, son, daughter, or parent to a foreign country. Qualifying exigencies for which an employee may take FMLA leave include making alternative child care arrangements for a child of the military member when the deployment of the military member necessitates a change in the existing child care arrangement; attending certain military ceremonies and briefings; taking leave to spend time with a military member on Rest and Recuperation leave during deployment; or making financial or legal arrangements to address a covered military member's absence; or certain activities related to care of the parent of the military member while the military member is on covered active duty. An employee may take qualifying exigency leave for the deployment of a son or daughter of any age.

f. **To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member (military caregiver leave).**

Eligible employees are entitled to up to 26 workweeks of FMLA leave in a "single 12-month period" to care for that covered service member. Covered service members include current members of the Regular or Reserve components of the Armed Forces and certain veterans.

The single 12-month period for military caregiver leave begins on the first day the employee takes FMLA leave to care for a covered service member and ends 12 months after that date, regardless of the method used by the employer to determine the employee's 12 workweeks of leave entitlement for other FMLA-qualifying reasons.

If an employee does not take all of his or her 26 workweeks to care for a covered service member during this single 12-month period, the remaining leave is forfeited.

Medical Certification

An employee absent three or more consecutive workdays because of personal illness shall submit, upon return to work, a medical certification of illness and of his or her fitness to return to work. An employee absent three or more consecutive workdays because of illness in the immediate family shall present, upon return to work, medical certification of the family member's illness.

Medical certification shall be made by a health care provider as defined by the Family and Medical Leave Act.

Intermittent Leave

Under some circumstances, employees may take FMLA leave on an intermittent or reduced schedule basis. That means an employee may take leave in separate blocks of time or by reducing the time he or she works each day or week for a single qualifying reason. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operations. If FMLA leave is for the birth, adoption, or foster placement of a child, use of intermittent or reduced schedule leave requires the employer's approval.

Spouses Working for Same Employer

When spouses work for the same employer and each spouse is eligible to take FMLA leave, the FMLA limits the combined amount of leave they may take for some, but not all, FMLA-qualifying leave reasons.

Eligible spouses who work for the same employer are limited to a combined total of 12 work weeks of leave in a 12-month period for the following FMLA-qualifying reasons:

- a. the birth of a son or daughter and bonding with the newborn child,
- b. the placement of a son or daughter with the employee for adoption or foster care and bonding with the newly-placed child, and
- c. the care of a respective parent with a serious health condition.

The limitation on the amount of leave for spouses working for the same employer does not apply to FMLA leave taken for some qualifying reasons. Eligible spouses who work for the same employer are each entitled to up to 12 workweeks of FMLA leave in a 12-month period, without regard to the amount of leave their spouses use, for the following FMLA-qualifying leave reasons:

- a. the care of a spouse or son or daughter with a serious health condition;
- b. a serious health condition that makes the employee unable to perform the essential functions of his or her job; and
- c. any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on "covered active duty."

Eligible spouses who work for the same employer are also limited to a combined total of 26 workweeks of leave in a single 12-month period to care for a covered service member with a serious injury or illness (commonly referred to as "military caregiver leave") if each spouse is a parent, spouse, son or daughter, or next of kin of the service member. When spouses take military caregiver leave as well as other FMLA leave in the same leave year, each spouse is subject to the combined limitations for the reasons for leave listed above.

Maintenance of Health Benefits

If an employee is provided group health insurance, the employee is entitled to the continuation of the group health insurance coverage during FMLA leave on the same terms as if he or she had continued to work. If family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. The employee must continue to make any normal contributions to the cost of the health insurance premiums.

Paid leave runs concurrently with FMLA leave, and the employee's share of group health plan premiums must be paid by the method normally used during paid leave (usually payroll deduction). An employee on unpaid FMLA leave must make arrangements to pay the normal employee portion of the insurance premiums in order to maintain insurance coverage. If the employee's premium payment is more than 30 days late, the employee's coverage may be dropped. The College will provide written notice to the employee that the payment has not been received and allow at least 15 days after the date of the letter before coverage stops.

In some instances, the College may choose to pay the employee's portion of the premium, for example, in order to ensure that it can provide the employee with equivalent benefits upon return from FMLA leave. In that case, the College may require the employee to repay these amounts. In addition, the College may require the employee to repay the employer's share of the premium payment if the employee fails to return to work following the FMLA leave. An employee must return to work for 30 days in order to avoid being obligated to repay such amounts unless the employee does not return because of circumstances that are beyond the employee's control, including a FMLA-qualifying medical condition.

Maintenance of Other Benefits

Any benefits that would be maintained while the employee is on other forms of leave, including paid leave, must be maintained while the employee is on FMLA leave.

In order to restore any benefit, other than group health benefits, provided by insurance to the employee without the employee having to re-qualify for such benefits upon his/her return from leave, the College may find it necessary for premiums for such insurance to be paid continuously during the unpaid leave period to avoid a lapse of coverage. If the employee's premium payment is more than 30 days late, the employee's coverage may be dropped. The College will provide written notice to the employee that the payment has not been received and allow at least 15 days after the date of the letter before coverage stops.

Designation of Paid Leave

Accrued paid leave such as sick, personal, bonus, or vacation leave is required to be used concurrently with FMLA leave. When using accrued paid leave, the employee must follow the College's normal rules for the use of that type of leave, such as submitting a leave request and providing advance notice. If an employee does not meet the requirements to take paid leave under the College's normal leave policies, the employee may still take unpaid FMLA leave.

Job Restoration

When an employee returns from FMLA leave, he or she must be restored to the same job or to an "equivalent job". The employee is not guaranteed the actual job or title held prior to the leave. An equivalent job means a job that is virtually identical to the original job in terms of pay, benefits, and other employment terms and conditions (including shift and location).

Equivalent pay includes the same or equivalent pay premiums and the same opportunity for overtime as the job held prior to FMLA leave. An employee is entitled to any unconditional pay increases that occurred while he or she was on FMLA leave. Pay increases conditioned upon seniority, length of service, or work performed must be granted only if employees taking the same type of leave for non-FMLA reasons receive the increases. Equivalent pay includes any unconditional bonuses or payments.

All benefits an employee had accrued prior to a period of FMLA leave must be restored to the employee when he or she returns from leave. An employee returning from FMLA leave cannot be required to requalify for any benefits the employee received before the leave began.

Limitations to FMLA Protections

An employee on FMLA leave is not protected from actions that would have affected him or her if the employee was not on FMLA leave. For example, if a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours. If an employee is laid off during the period of FMLA leave, the College must be able to show that the employee would not have been employed at the time of reinstatement.

An employer may also deny restoration to a “key” employee under certain circumstances. A key employee is a salaried, FMLA-eligible employee who is among the highest-paid 10 percent of all of the employer’s employees within 75 miles. To deny restoration to a key employee, an employer must have determined that substantial and grievous economic injury to its operations would result from the restoration, must have provided notice to the employee that he or she is a key employee and that restoration will be denied, and must provide the employee a reasonable opportunity to return to work.

Fitness-For-Duty (Return-to-Work Doctor’s Note)

An employee out on FMLA must provide a return to work, or “fitness-for-duty,” certification from the employee’s health care provider showing that the employee is able to resume work.

In general, a fitness-for-duty certification may not be required for each absence taken on an intermittent or reduced leave schedule. However, if the College has a reasonable belief that the employee’s return to work presents a significant risk of harm to the employee or to others, the College may require a fitness-for-duty certification up to once every 30 days.

As long as the College has provided the required notice regarding any fitness-for-duty certification requirement, the employee’s return to work may be delayed until the fitness-for-duty certification is provided. KC’s Human Resource Director may contact an employee’s health care provider to clarify or authenticate a fitness-for-duty certification, but cannot delay the employee’s return to work while making that contact. The employee is responsible for paying any cost of obtaining the fitness-for-duty certification.

Notice and Reporting by Employees

- a. An employee must provide the College at least 30 days advance notice before FMLA leave is to begin if the need for leave is foreseeable. If 30 days’ notice is not practicable, notice must be given as soon as possible and practical taking into account all of the circumstances. For foreseeable leave due to a qualifying exigency, an employee must provide notice as soon as practicable, regardless of how far in advance such leave is foreseeable.
- b. The College will require the employee to comply with the College’s usual and customary notice and procedural requirements for requesting leave absent unusual circumstances. If the employee does not comply with the College’s usual and customary policy and procedures and no unusual circumstances exist, the FMLA-protected leave may be delayed or denied.
- c. Whenever leave is needed for a planned medical treatment, whether for an immediate family member or the employee, the employee will make efforts to schedule the treatment so as to minimize disruption to the operations of the College.

- d. An employee must provide sufficient information to reasonably determine whether the FMLA may apply to the leave request. Calling in “sick” without providing more information is not considered sufficient notice to trigger an employer’s obligations under the FMLA.
- e. An employee on FMLA leave will be required to report periodically on his/her status and intention to return to work. The Human Resources Director will determine the frequency of reporting required based on the employee’s situation.
- f. Employees should advise the College if and when they decide unequivocally not to return to work.
- g. When leave is needed for a planned medical treatment, a leave request will be submitted prior to the absence. When leave is not foreseeable, a leave request will be completed by the supervisor. All leave requests will be submitted to Human Resources on a monthly basis.

Designation of Leave

- a. It is the College's responsibility to determine that an employee is eligible for FMLA leave. FMLA paperwork may be obtained through the Human Resources office. However, the determining factor in designating FMLA leave is the qualifying reason(s), not the employee's election or reluctance to use FMLA leave or to use all, some, or none of the accrued leave. The College's designation must be based on information obtained from the employee or the employee's authorized representative.
- b. If an employee notifies the College of the need for FMLA leave before the employee meets the eligibility criteria, the College will notify the employee of the effective eligibility date.
- c. Employees seeking to use FMLA leave may be required, at the election of the College, to provide:
 - 1) Medical certifications supporting the need for leave due to a serious health condition affecting the employee, an immediate family member, or a covered service member no later than 15 calendar days after the request by the College.
 - 2) Second or third medical opinions and periodic re-certification (at the College's expense). 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. 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. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the College and the employee. The College is required to provide the employee, within five business days, with a copy of the second and third medical opinions where applicable, upon request by the employee. If the employee refuses to release relevant medical records in order for the health care provider to render a sufficient and complete opinion, the employee's request for FMLA leave may be denied.
 - 3) The College may request periodic medical recertification in connection with an ongoing or long-term condition. A recertification may be required when an employee is seeking an extension of the initial leave period. The timing and frequency of medical recertification will depend on the reason for the leave and its expected duration.
 - 4) Certification of fitness-for-duty prior to returning to work.
 - 5) Active duty orders for the covered military member when the employee first requests exigency leave or supporting documentation which may include:
- d. A description, signed by the employee, describing facts supporting the leave request and including any available documentation, such as a copy of the appointment, or copy of a bill for service.

- e. The approximate date the qualifying exigency commenced or will commence.
- f. The beginning and end dates for the absence if the request is for a single period of time.
- g. An estimate of the frequency and duration of the exigency if the request is for intermittent or reduced schedule basis.
- h. Contact information of the third party or entity and a brief description of the purpose of the meeting if the exigency involves meeting with a third party or entity.

Requesting Leave

- a. The employee will notify Human Resources 30 days in advance of the leave date, whenever practicable or as soon as possible if 30 days is not practical. The employee will also notify his/her supervisor with as much notice as possible for scheduling purposes. When a supervisor is aware of a pending absence or has an employee who has been absent for more than three consecutive work days, the supervisor will also contact the Human Resources Director to inform him/her of such absences.
- b. The Human Resources Director will provide the employee with the proper Certification of Health Care Provider request and the Notice of Eligibility and Rights & Responsibilities information. The Certification of Health Care Provider must be returned within 15 calendar days. If a certification is incomplete or insufficient, the employee will have up to seven calendar days to remedy the deficiency. The College may designate a Human Resources representative or a health care provider to contact the employee's health care provider, consistent with the [Health Insurance Portability and Accountability Act](#) (HIPAA), to verify and/or clarify if the employee cannot cure any deficiencies in the medical certification. If the employee refuses to cure deficiencies or does not grant permission to clarify, the employee's request for FMLA leave may be denied.
- c. The Human Resources Director will notify the employee, the employee's supervisor, and the Payroll Manager of the status of the request for leave within five workdays of the date of the submission of all necessary information. The employee will receive the Designation Notice as official documentation of their FMLA status. The College may designate FMLA leave with appropriate information without an application from the employee. Notification to the employee that leave will be designated as FMLA will be provided to the employee, the employee's supervisor, and the Payroll Manager.
- d. The Payroll Manager will arrange with the employee the payment schedule for coverage of the employee's spouse and/or dependents for all applicable benefit deductions if leave is without pay.
- e. If an absence which begins as other than FMLA leave later develops into an FMLA-qualifying absence, the entire portion of the leave period that qualifies under FMLA will be counted as FMLA leave.
- f. Once the College has knowledge that the leave is being taken for an FMLA-required reason, the College will, within five business days, absent extenuating circumstances, notify the employee that the leave is designated and will be counted as FMLA leave.

Working from Home While on FMLA

Employees on FMLA leave for their own serious health condition or that of a family member must take full leave during a time of absence. Working from home, or in any capacity, is not allowed. Exempt employees on intermittent leave for their own serious health condition or that of a family member may, with the approval of Human Resources and their supervisor, work out an arrangement where hours missed from work are made up over a two week period. The two week period may be extended if a holiday falls within the time period. Hours not made up will be designated as leave. The normal leave process must initially be followed, but the supervisor will indicate on the leave request that the hours were made up before sending the leave request to Human Resources.

Non-exempt employees on FMLA leave are never allowed to work from home or any day the College is not fully open. In rare instances, non-exempt employees on intermittent leave for their own serious health condition or that of a family member may, with the approval of Human Resources and their supervisor, work out an arrangement where hours missed in a day are made up sometime in the same week. Due to the Fair Labor Standards Act, hours worked in a single week must never be more than 40.

Enforcement

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to the FMLA. If the employee believe that his/her rights under the FMLA have been violated, the employee may file a complaint with the Wage and Hour Division of the U.S. Department of Labor or file a private lawsuit.

Definitions

- a. **Spouse:** Spouse means a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a same-sex marriage or common law marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States if the marriage could have been entered into in at least one state.
- b. **Parent:** Parent means 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 child. This term does not include parents “in law.”
- c. **Son or Daughter:** Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time that FMLA leave is to commence.
- d. **In Loco Parentis:** The FMLA regulations define in loco parentis as including those with day-to-day responsibilities to care for or financially support a child. Employees who have no biological or legal relationship with a child may, nonetheless, stand in loco parentis to the child and be entitled to FMLA leave. Similarly, an employee may take leave to care for someone who, although having no legal or biological relationship to the employee when the employee was a child, stood in loco parentis to the employee when the employee was a child, even if they have no legal or biological relationship.
- e. **Next of Kin:** Nearest blood relative
- f. **12-month period:** Kilgore College uses a “rolling” 12-month period measured backward from the date of any FMLA leave usage.