

## FAMILY AND MEDICAL LEAVE POLICY

The Family and Medical Leave Act (Public Law 103-3) is a federal law that became effective on August 5, 1993. FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons.

### Eligibility

Under the provisions of the Family and Medical Leave Act (FMLA), an employee must have worked for at least 12 months and for at least 1,250 hours during the year prior to the leave request. All salaried/exempt employees are presumed to have satisfied this eligibility requirement unless it is clearly demonstrated by Elms College that the exempt employee did not work at least 1,250 hours during the preceding 12 month period.

In determining eligibility for FMLA leave, the College will implement a "roll back" method for calculating whether an employee has worked the required 1,250 hours and to calculate the maximum amount of leave that the employee is entitled to take at the time the request for time off is made.

When you request FMLA leave, the College will look at the 12 months prior to the date of your FMLA request and determine whether you have worked at least 1,250 hours during that 12-month period.

If you meet the eligibility requirement of 1,250 hours, the College will determine whether any FMLA leave was used during that time. If any FMLA leave was taken, that amount would be deducted from the 12 weeks of FMLA currently being requested. The balance of time could then be applied to the current FMLA request.

### Notification to Employer

Eligible employees who want to take FMLA leave must give at least 30 days notice when the leave is foreseeable. When unforeseen circumstances prevent an employee from giving advance notice, an employee must give notice as soon as is practicable (e.g., 1 to 2 business days of realizing the need for FMLA leave) in order for the College to properly accommodate the request and also maintain staffing and schedules.

All notices and requests for FMLA leave, along with the reason for the leave, should be directed to Human Resources. The Human Resources Director will give the employee a written notice within two (2) business days detailing the responsibilities, expectations and details surrounding the FMLA leave for both the employer and employee.

The College reserves the right to designate any leave of absence as Family Leave where the conditions of the leave fall under the Family and Medical Leave Act. Usually, this determination is made when the employee explains the reason for the leave in his or her leave request to Human Resources. The College may designate any leave as Family Leave either before the leave goes into effect or may retroactively designate an entire leave of absence as family leave during the course of the leave itself such that the total time off is counted towards an employee's 12 week entitlement.

### Reasons for FMLA Leave

FMLA provides qualified employees with up to 12 weeks of unpaid leave each year for the following reasons:

1. birth and care of a newborn child, and adoption or foster care placement of a child.
  - FMLA leave may begin before the birth, adoption, foster care placement of a child takes place.
  - FMLA leave may take place at any stage of the pregnancy for purposes of prenatal care, to overcome a condition during the pregnancy which prevents the employee from returning to work, to give birth to a child, or for postnatal care of the child.
  - FMLA leave for adoption purposes is permitted where the adopted person is under the age of 18, or is over the age of 18 but is incapable of taking care of him/her self due to a mental or

physical disability and requires the assistance of another person to provide care for the performance of daily activities and functions. An employee may take this leave in order to take time to secure placement of an adopted child under the care of the employee or to actually care for the adopted child.

- FMLA leave for foster care placement is permitted where the employee: can show that he/she has either secured a voluntary agreement with the State concerning the placement of an individual in the care of the employee; has obtained a court order for placement of a foster child in the employee's care; needs to fulfill obligations imposed by either the State or the court in order to be able to ultimately procure a State agreement or a court order.
  - If a husband and wife work for the College and both are eligible employees for FMLA leave, they will only be afforded a combined total of twelve weeks of leave for purposes of childbirth, adoption or placement in foster care.
  - While an employee may be eligible to take a leave before childbirth, adoption or foster care takes place, an employee's entitlement to FMLA leave for these circumstances will expire twelve months after the date of the childbirth or placement into adoptive or foster care.
2. Care of the employee's spouse, son, daughter or parent who has a serious medical condition. An employee may request a leave of absence when it is determined that he or she is needed to care for one of these family members.
- For purposes of this policy, the term "spouse" does not include unmarried domestic partners. This policy encompasses those partners who have been joined in marriage under Massachusetts law.
  - "Son" or "Daughter" includes children who are under the age of 18 and children over the age of 18 who have a mental or physical disability that requires the assistance of another person to provide care for the performance of daily activities and functions. This definition also applies to children who are adopted, placed in the foster care of the employee, or who are a legal ward of the court, and who are financially supported and cared for by the employee. There is no requirement that there be a biological or legal relationship between the child and the employee.
  - The term "parent" is defined for purposes of this policy to include biological parents or persons who financially supported and cared for the employee when the employee was a child. The law does not cover the employee's in-laws whose sole relationship with the employee is by way of marriage; grandparents, aunts, uncles, siblings, cousins, or an unmarried domestic partner.
3. "Serious Health Condition." Under FMLA, a serious health condition is an illness, injury, impairment, or any physical or mental condition that requires inpatient medical care or continuing treatment by a health care provider which results in, at least, one of the three conditions:
- results in a period of incapacity or treatment in connection with **inpatient care** in a hospital, hospice, or residential care facility;
  - results in a period of incapacity requiring absence from work, school or other daily activities for **three calendar days** and involves **continuing treatment** (or under the supervision of) a health care provider. [Continuing treatment is defined as being treated two or more times for the injury or illness by the health care provider or being treated at least on one occasion by a health care provider which results in a regimen of continuing treatment under the supervision of the health care provider; or being supervised (but not necessarily actively treated) by a health care provider for a long-term or chronic condition which cannot be cured.] ; or
  - results in the **continuing treatment** by (or under the supervision of) a health care provider for a **chronic** or **long-term** health condition that is **incurable** or so serious that if not treated, would likely result in a period of incapacity of more than three calendar days.

### Medical Certification

Employees requesting such leave will be given a written request to have their health care provider fill out the College's medical certification form attesting to the need for the employee's assistance in caring for the seriously-ill family member. This form needs to be filled out and completed no later than 15 days after the employee's request for the leave (or as soon as possible in the event of an unforeseeable ailment(s)). Failure to furnish the College with a completed medical certification form according to this policy may result in a denial of an employee's request for family leave until the certification form is completed and submitted to the Human Resources Department. The College may ask the employee to go to another health care provider to be designated by the College for a second opinion (to be paid for by the College) in order to verify the medical necessity of such assistance and leave of absence. If the two opinions differ, the employee may elect to obtain a third opinion at a third health care provider to be designated by the College and paid for by the College. This third opinion will be final and binding.

Upon completion of the medical certification form, the College and the employee will arrive at some form of leave schedule in order to accommodate the employee's responsibilities for caring for their family member(s). An employee may wish to exhaust all of their twelve week entitlement for purposes of this type of leave or the employee may elect to take their leave on an intermittent or reduced schedule basis. The employee will need to meet with a Human Resources staff member to discuss the type of leave to be taken and the anticipated duration of such leave. The College will attempt to accommodate all intermittent or reduced schedule leave requests. However, there may be instances where the College may have to transfer the employee to an alternative position in order so we can accommodate the employee's request and also maintain staffing levels and schedules. Although such a transfer may result in a change of duties, the employee's pay rate and benefits will not be decreased. The transfer will be in effect until the employee returns to their normal schedule.

During the course of the leave, the College may ask the employee to obtain re-certifications concerning the employee's need to care for the family member and will also be required to report periodically during the course of their leave on the employee's status and intent to return to work.

### Employee's Own Serious Health Condition

Employees may request FMLA leave because of their own serious health condition which renders them unable to perform the functions of their job. For purposes of this section, "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition which results in, at least, one of the three conditions:

- a period of incapacity or treatment in connection with **inpatient care** in a hospital, hospice, or residential care facility;
- a period of incapacity requiring absence from work, for **three calendar days** and involves **continuing treatment** (or under the supervision of) a health care provider. Continuing treatment is defined as being treated two or more times for the injury or illness by the health care provider or being treated at least on one occasion by a health care provider which results in a regimen of continuing treatment under the supervision of the health care provider; or being supervised (but not necessarily actively treated) by a health care provider for a long-term or chronic condition which cannot be cured; or
- **continuing treatment** by (or under the supervision of) a health care provider for a **chronic** or **long-term** health condition that is **incurable** or so serious that if not treated, would likely result in a period of incapacity of more than three calendar days.

An employee who wishes to take FMLA leave because of their own serious health condition is required to submit a **medical certification form** to Human Resources no later than 15 days after the request for leave is made (or as soon as practicable when an unforeseen ailment arises). The medical

certification form will be given to the employee when he or she requests a leave of absence. The form will outline the essential functions of the employee's job for the health care provider to review. Failure to furnish the College with a completed medical certification form may result in a denial of an employee's request for family leave until the certification form is submitted to Human Resources. The College may ask the employee to go to another health care provider to be designated by the College for a second opinion (to be paid for by the College) in order to verify the medical necessity of such care and subsequent leave of absence. If the two opinions differ, the employee may elect to obtain a third opinion at a third health care provider to be designated by the College and paid for by the College. This third opinion will be final and binding.

Upon completion of the medical certification form, the College and the employee will arrive at some form of leave schedule to accommodate the employee's medical necessity for the leave. The employee may elect to use their accrued sick, personal and vacation time for the leave and/or take the leave on an intermittent or reduced schedule basis.

The employee will need to meet with a Human Resources staff member to discuss the type of leave to be taken and the anticipated duration of such leave. The College will attempt to accommodate all intermittent or reduced schedule leave requests. However, there may be instances where the College may have to transfer the employee to an alternative position in order so we can accommodate the employee's request and also maintain staffing levels and schedules. Although such a transfer may result in a change of duties, the employee's pay rate and benefits will not be decreased. The transfer will be in effect until the employee returns to their normal schedule.

During the course of the leave, the College may ask the employee to obtain medical re-certifications from their health care provider concerning the employee's medical necessity for such leave and will also be required to report periodically during the course of their leave on their status and their intent to return to work.

Before an employee can return to work following a leave to treat their own serious health condition, he or she must obtain medical certification from their health care provider attesting that the employee is fit to resume work. This certification shall be limited to an evaluation of the particular health condition that resulted in the employee's need for FMLA leave. Failure to submit the required fitness-for-duty certification to Human Resources will result in the denial of the employee's request to resume work.

### **Use of Accrued Sick, Vacation & Personal Time**

For any of the above mentioned types of leaves, the College requires employees to use their accrued/awarded leave time (vacation, personal, sick), if available, toward the FMLA leave resulting in a paid leave of absence.

The College will maintain the employee's health coverage under the same conditions as the coverage would have been provided if the employee had been continuously employed during the entire leave period. Employees who are out on FMLA leave will be responsible for maintaining their portion of health insurance premiums while on leave. Employees have the option of pre-paying their premiums before going out on leave. Failure to make timely health insurance payments in accordance with the College's health insurance policy, or failure to return to work following a FMLA leave, will result in the College instituting actions to recover any premiums that were assumed by the College during the employee's absence and may result in the termination of the employee's health insurance coverage.

The College may elect to pay the employee's share of other benefits (e.g. life insurance, disability insurance etc.) while the employee is on FMLA leave in order to avoid a lapse in coverage. Under these circumstances, the employee will be responsible for reimbursing the College for any payments made on his or her behalf.

**Employee Rights – Return to Work**

An employee returning from an FMLA leave will be entitled to their same or equivalent position with the same pay, benefits, working conditions and duties. Benefits will resume and accrue in the same manner and at the same levels as provided before the leave took place. Employees will not be required to re-qualify for any benefits previously enjoyed before the FMLA leave began. Employees who are no longer qualified for their position due to certification or training requirements for the position will be afforded additional time to fulfill those conditions upon return to work. Employees with ongoing physical or mental disabilities who return to work will also be afforded reasonable accommodations pursuant to the College's duties to comply with the Americans with Disabilities Act.

Not all employees will be afforded this employment protection while they are out on FMLA leave. "Key" employees whose absence from the College would result in substantial and grievous economic harm to the College are not afforded this protection of employment. Any employee who falls under this classification will be notified in writing by Human Resources about their status when they initially request FMLA leave and of the possible ramifications of taking such a leave. Key employees may still wish to take such a FMLA leave. However, there is no guarantee that his or her position will be available for them upon their return to employment.

Furthermore, an employee's position will not be held open while he or she is out on leave if other employees who are employed in similar positions are the subject of layoffs. In this situation, employees who are on leave will be treated the same as others who are employed in similar positions. The College will look at a variety of factors (e.g., employee appraisals by supervisors, seniority etc.) in determining who would be laid off in a given area. The fact that an employee is on a leave of absence will not be among the determining factors for a layoff. Therefore, an employee who is on FMLA leave has the same chance of losing his or her position in a layoff situation as if they had been continuously working during that same time.

**Failure to Return to Work**

There may be occasions when an employee may not wish to return to work following a FMLA leave. Under these circumstances, the College reserves the right to recover from the employee any health insurance premiums (whether made on behalf of the employee or whether it was the College's portion of the health insurance premium) that it made during the employee's unpaid leave of absence. Exception: reason for failure to return to work is attributed to a continuation, reoccurrence or onset of a serious health condition involving the employee or family member that would have entitled the employee to family leave had he/she remained employed at the College. The College may require medical certification from the employee's health care provider to verify the actual condition of the employee. The employee has 30 days from the day of the request to supply the College with the completed medical certification form.

**Faculty Requests for FMLA Leave**

Faculty members requesting FMLA leave should notify his or her Division Chair and the Vice President of Academic Affairs, in addition to Human Resources.