

D.5.4 (Policy) Family and Medical Leave

Responsible Department: Human Resources

Board Adoption: 4-28-09

Last Board Action: 10-26-10

The College District provides the following types of leave for medical and military absences:

- (1) Medical-Related: Leave under the Family and Medical Leave Act (FMLA)
Medical Leave
Extended Leave
- (2) Military Related: FMLA Qualifying Exigency Leave
FMLA Caregiver Leave

Eligibility: To be eligible for leave under the Family and Medical Leave Act, an employee (i) must have been employed with the College District for at least 12 months (which do not have to be consecutive), and (ii) must have worked at least 1,250 hours during the previous 12 months.

To be eligible for Medical Leave, an employee must (i) not qualify for FMLA leave; (ii) be absent for the treatment of their own on-the-job or off-the-job injury or serious health condition, and (iii) have completed the entry probation period, except for on-the-job injuries, for which a medical leave can begin immediately.

To be eligible for Extended Leave, an employee must: (i) exhaust FMLA or medical leave within the preceding 12 months; (ii) apply for extended leave through the Human Resources Department; and (iii) provide the College District a Healthcare Provider Certification confirming the medical necessity for continued absence. The application for extended leave must be received by Human Resources *before* expiration of pending FMLA or Medical leave.

The maximum duration of all combined medical-related leaves during a "rolling" 12-month period is 26 weeks. Employees are subject to dismissal from employment if they are not reinstated to work within 26 weeks, except where an extension of leave is requested by the employee and granted by the College District: (i) as a reasonable accommodation under the Americans with Disabilities Act (ADA); (ii) where the employee has accrued and unused sick leave or (iii) as otherwise required by law. Refer to Sections 1 (D) and (E) of the College District's Leave of Absence Procedure on how to apply for these extensions of leave.

Moonlighting During FMLA Leave: The College District prohibits employees from engaging in any employment with another employer or from providing non-employment services for compensation ("moonlighting") without prior written authorization from Human Resources. Employees engaging in moonlighting while on leave of absence in violation of this policy are subject to termination from employment. The **moonlighting** limitations do not apply to employees engaged in military service while on approved military leave.

Notice to College District: Employees must provide the College District with 30 days prior notice of the need for a foreseeable leave. If 30 days' prior notice is not practicable because of unforeseen circumstances, then employees must (i) give notice of the need for leave on the same day or on next business day they learn of the need for leave; and (ii) in accordance with the College District's and the employee's departmental call-in procedures for reporting absences.

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Failure to comply with call-in procedures and notify the College District regarding an absence as soon as "practicable" will result in delay or denial of the FMLA leave by the College District (absent unusual circumstances). If FMLA leave is delayed or denied due to the employee's failure to comply with call-in procedures or provide timely notice, the employee may be subject to disciplinary action, up to and including dismissal, under the College District's policies regarding unauthorized absences.

Certification of Leave: After the College District receives notice of the employee's absence, the College District will notify the employee whether the eligibility requirements for FMLA leave are met; provide information regarding the employee's FMLA rights and responsibilities; and identify and issue any required medical certification forms to be completed by the employee and his/her Health Care Provider supporting the leave. Employees are obligated to return any required medical certification to the College District within 15 days.

Once the College District receives a complete and sufficient medical certification, the College District will notify the employee whether the absence will be designated as FMLA, medical or extended leave. If an absence is designated as FMLA leave, the College District will inform the employee of the amount of leave, effective from first day of absence that will be counted against the employee's FMLA leave entitlement.

Use of Accrued Benefits During Leave: If an employee has accrued sick pay or vacation or is granted emergency leave from the College District's Emergency Leave Bank, these paid time off benefits must be used during FMLA, medical or extended leave (in accordance with the College District's policies) until exhausted. The remainder of the leave would be unpaid unless the employee qualifies for short term disability (STD) benefits.

If an employee is receiving lost wage benefits under the College District's workers' compensation program for a job-related injury/illness, the employee may elect to use accrued sick pay or vacation, emergency leave or other paid time off benefits to supplement the workers' compensation benefits up to 100 percent of the employee's regular weekly wages. Employees should contact the College District's Workers' Compensation Office to request use of sick pay, vacation, or emergency leave to supplement worker's compensation lost wage benefits.

Medical Plan Coverage during Leave: During FMLA leave, the College District will continue to pay the premiums for the employee's medical plan coverage and the College District's portion of premiums for dependant medical plan coverage. Employees are responsible for paying their portion of any dependant medical plan premiums and retirement coverage premiums while on FMLA leave.

Employees are responsible for paying both the employee portion and any dependant medical plan premiums and retirement plan contributions premium while on Medical and Extended leave.

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When accrued sick pay, vacation, emergency leave, STD or other paid time off benefits are being used during a leave, the employee and dependant medical plan premiums and retirement plan contributions for which the employee is responsible will be deducted from those benefits. If an employee's paid time off benefits is exhausted during an extended leave, the employee must make arrangements to continue paying the medical plan premiums directly to ERS.

If employees on FMLA leave fail to pay their portion of the medical plan premiums within 30 days of a payment due date while on unpaid leave, their dependant's coverage will cease as of the date on which the premium payment was due, and coverage will be reinstated only upon the employee's return to work before exhaustion of the FMLA leave.

If an employee fails to pay any employee or dependent medical plan premium due during medical or extended leave, coverage will be dropped as of the date on which the premium was due, and the employee and/or dependent may be required to re-qualify for medical coverage if the employee is reinstated to employment.

Return to Work From Leave: If an employee on FMLA, medical or extended leave is medically released (full or partial) by their health care provider, the employee must report to the Human Resources Department by the *next working day* after their release. If an employee fails to timely report to the College District after being released by the employee's health care provider, the employee **is** subject to dismissal. Employees who do not request reinstatement and return to work before the expiration of their FMLA **or** medical leave will be dismissed from employment unless they apply for and are granted extended leave.

Employees seeking reinstatement from leave due to their own serious health condition must provide the College District with a written return-to-work/fitness for duty certification from the employee's health care provider(s) confirming the employee's release for work and ability to perform the essential functions of his/her job (with or without reasonable accommodation). The College District may also require an employee's health care provider(s) to designate the essential job functions, if any, which the employee cannot perform at the time reinstatement, is requested.

Employee's timely requesting return to work from an FMLA leave will be reinstated to their former position, or to an equivalent position in the discretion of the College District, provided that the employee can perform the essential job duties. Reinstatement from medical or extended leave is subject to the College District's personnel requirements. Employees returning to work from a Medical or Extended leave are not guaranteed reinstatement to work. Refer to Sections 1(B) and (C) of the Leave of Absence Procedure regarding reinstatement procedures for medical and extended **leaves**.

Extension of Medical-Related Leave: Employees who exhaust their extended leave but need additional time off in order to return to work from their own injury or serious health condition may qualify for a reasonable extension of their leave (i) as a reasonable accommodation under the ADA; (ii) where they have accrued and unused vacation and/or sick pay benefits; or (iii) as

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otherwise required by law. Refer to Sections 1(D) and (E) of the Leave of Absence Procedure for complete information on the procedures for and maximum duration of extension of medical-related leave.

FMLA Servicemember Leaves: Employees who meet the eligibility requirements for FMLA leave may request or be placed on FMLA military servicemember leave if the employees' (i) spouse, son, daughter or parent is on "covered active duty" and (ii) the absence from work is for a "qualifying exigency" related to the family member's military service. Employees should refer to Section 2(A) the College District's Leave of Absence Procedure for more information regarding "covered active duty" and "qualifying exigencies."

Employees must give the College District notice of their need for FMLA qualifying exigency leave as soon as practicable. Employees are required to complete the pertinent certification form within 15 days of requesting a qualifying exigency leave. In addition, the first time employees request a qualifying exigency leave they will be required to provide the College District a copy of the covered military member's active duty orders or documentation of the call to active duty and the dates of active duty service.

Employees who meet the eligibility requirements for FMLA leave may request or be placed on FMLA military service member leave to care for their spouse, son, daughter, parent, or next of kin who is a "covered service member" and has incurred an injury or illness in the line of duty while on active duty in the Armed Forces. Employees should refer to Section 2(B) of the College District's Leave of Absence Procedure for information regarding "covered service members". Employees are required to complete the pertinent certification form within 15 days of requesting caregiver leave.

FMLA leave to care for an injured or ill servicemember, when combined with other types of FMLA-qualifying leave, may not exceed 26 workweeks in a 12-month period. The amount of leave for which employees are eligible may be reduced if they have taken other FMLA leave during the preceding 12 months.

Dismissal and Eligibility for Rehire: Employees who are dismissed under this policy will be eligible to reapply for future employment by submitting an application to College District.