

### **D.5.4.1 (Procedure) Family and Medical Leave**

Responsible Department: Human Resources

Based on Board Policy: [D.5.4](#) – Family and Medical Leave

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#### **General Information**

A leave of absence is available for those times when it is necessary for an employee to be absent for certain qualifying reasons. The College District provides several types of leave of absence:

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

Qualification for leave is dependent on (i) the reason for the requested leave, (ii) length of service and (iii) hours worked for the College District. A request for leave of absence must be submitted to the Human Resources Department. The College District's leave of absence form, which is available from Human Resources, must be completed to provide pertinent information regarding any FMLA, Medical or Extended leave. The Human Resources Department will make a determination and notify employees regarding their eligibility for leave of absence. The College District may also designate and place an employee on leave of absence, where appropriate under the College District's leave of absence policy and this procedure, even if the employee has not requested a 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) (please refer to Section 1(D) of this policy); (ii) where the employee has accrued unused sick leave (please refer to Section 1 (E) of this policy); or (iii) as otherwise required by law.

All leaves of absence are unpaid. An employee must use paid time off benefits, such as accrued vacation or sick pay, emergency leave, short term disability (STD) or worker's compensation lost wage benefits, during the leave.

Employees whose positions are eliminated due to reorganization, reduction in force or other business reasons during their leave of absence will be notified of this action and are subject to dismissal from employment. Employees whose positions are eliminated during a military leave of absence may be dismissed in accordance with applicable law.

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An authorized leave does not constitute a break in service, but the time spent on unpaid leave will not be included as service credit except where required by law.

The College District prohibits employees from engaging in any employment with another employer or 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.

#### **Types of Leave and Eligibility**

##### **1. Medical-Related**

###### **(A) Family and Medical Leave Act (FMLA Leave)**

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.

Eligible employees will be granted an FMLA leaves of absence for up to 12 weeks within a "rolling" 12-month period (calculated backwards from the first day of leave) for any of the following reasons:

- The birth or placement (adoption or foster care) of a child or to care for a child after birth (a "newborn leave"); or
- To care for a family member (the employee's spouse, child or parent, but not a parent-in-law) with a serious health condition (this leave requires certification by a health care provider); or
- For a serious health condition that makes the employee unable to perform the functions of the position held (this leave requires certification by a health care provider).

Eligible employees may take leave under the FMLA for any combination of these reasons, but the total of all combined leaves cannot exceed 12 weeks within a "rolling" 12-month period. Spouses who are both employed by the College District are limited to a combined total of 12 weeks of FMLA leave within a "rolling" 12-month period for the birth or placement of a child, or the care of a parent with a serious health condition.

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A newborn leave (for birth, placement, adoption or foster care of a child, or to care for a child after birth) must be taken in a continuous time period and may not be taken in intermittent periods or through a reduced work schedule. A newborn leave must be completed within 12 months after the birth, adoption or placement of the child.

Employees may take leave for their own serious health condition or the serious health condition of a family member in a continuous time period, in intermittent time periods (for example, a period of working followed by a period of absence) or through a reduced work schedule (for example, cutting back on work hours). Leave for a serious health condition is permitted only for the period of the actual medically required absence.

#### **Job-Related Injuries**

Absences for job-related injuries or illnesses covered under the College District's workers' compensation program will also be considered FMLA leave, provided that (i) the employee meets the FMLA eligibility requirements and (ii) the injury or illness is a serious health condition. If an employee is on FMLA leave for a job-related illness or injury and receiving workers' compensation lost wage benefits under the workers' compensation plan, the employee may elect to use accrued sick pay or vacation or emergency leave to supplement the workers' compensation lost wage benefits (up to 100 percent of 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 their worker's compensation lost wage benefits.

#### **Serious Health Condition**

For the purpose of this policy, a "serious health condition" for medical-related leaves means an illness, injury, impairment or physical/mental condition that involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a healthcare provider as defined in the FMLA. Ordinarily, unless complications arise, the common cold, flu, earaches, upset stomach, ulcers, headaches (other than migraines) and routine dental or orthodontia problems are examples of conditions that DO NOT constitute a serious health condition or qualify for FMLA leave.

#### **Required Notice of Leave to the College District**

##### Foreseeable Leave:

Where an absence for FMLA leave is foreseeable (including intermittent or reduced work schedule leaves), employees are required to provide the College District with 30 days prior notice of their absence. If less than 30 days advance notice of foreseeable FMLA leave is provided to the College District, the employee may be required to explain why it was not

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practicable to give 30 days' notice. If an employee fails to give timely advance notice when the need for leave is foreseeable, the College District may delay the leave until 30 days after it has received the notice.

This 30-day notice requirement does not apply to qualifying exigency leave for a military service member. However, employees must give the College District notice of the need for FMLA qualifying exigency leave as soon as practicable.

#### Unforeseeable Leave:

If 30 days prior notice of absence is not practicable because of unforeseen circumstances, then notice of the leave must be given as soon as "practicable." This means that the employee must give the College District notice (i) on the same day the employee learns of the need for leave or on next business day, and (ii) in accordance with the College District's and the employee's departmental call-in procedures for reporting absences. The notice should include the reasons for the requested leave, the anticipated start date of the leave and the anticipated duration of the leave.

The failure to comply with the College District's and departmental-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 practicable notice, the employee's absence may result in disciplinary action, up to and including dismissal, under the College District's policies regarding unauthorized absences.

#### **Designation of FMLA 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 provide the employee with 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 complete and sufficient medical certification, the College District will notify the employee whether the absence will be designated as FMLA 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.

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#### **Reassignment During Leave**

If leave is taken on an intermittent basis or reduced work schedule for foreseeable and planned medical treatment because of a family member's or the employee's own serious health condition, the College District may transfer the employee during the leave to an alternative position with equal pay and benefits which better accommodates the intermittent or recurring leave schedule.

#### **Scheduling of Medical Appointments**

If leave is taken for foreseeable and-planned medical treatment because of a family member's or employee's own serious health condition, employees must make a reasonable effort to schedule the medical treatments so as not to disrupt operations of the College District.

#### **Certifications**

##### **(1) Initial Certifications**

If an employee requests or is placed on leave because of a family member's or the employee's own serious health condition, the employee must provide a complete and sufficient medical certification from a healthcare provider on the U.S. Department of Labor form provided to the employee by the College District. When the need for leave is foreseeable and 30-days notice has been provided to the College District, the employee must return a complete and sufficient medical certification before the leave begins. When the need for leave is unforeseeable, a complete and sufficient certification must be returned to the College District within 15 days after the employee's receipt of the certification form. The College District may also require that the employee's health care provider designate the essential job functions which the employee cannot perform as a result of the serious health condition.

If a medical certification is incomplete or insufficient, the employee will be notified in writing of the deficiencies and given 7 days to submit a complete and sufficient certification. If certification deficiencies are not corrected, FMLA leave may be denied and the absence considered unexcused, which may result in disciplinary action, up to and including termination.

If an employee fails to return a certification within 15 days, the College District will not consider the absence to be FMLA leave and the employee will be subject to disciplinary action, up to and including termination, for an unexcused absence.

If the College District has reason to doubt the validity of the medical certification, it may require (at the College District's expense) that the employee obtain a second opinion from a healthcare provider designated by the College District. If there is a conflict between the first and second opinions, the College District may also require (at its expense) a third opinion by a healthcare

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provider designated jointly by the College District and the employee. The opinion rendered by the third healthcare provider is final.

#### **(2) Recertifications During the Leave**

Employees are also required to provide healthcare provider recertifications, at their own expense, during a leave of absence. Recertifications may be required every 30 days or the minimum period that the treating healthcare provider sets for the incapacity or treatment, whichever is greater. If the period of incapacity is for more than 6 months or for an indefinite period, the employee will be required to submit a recertification to the College District every 6 months. The College District may also require recertifications when: (i) an employee requests an extension of leave; (ii) the circumstances set out in the original medical certification change significantly; or (iii) if the College District receives information that casts doubt on the continuing validity of the medical certification.

If recertification is not provided within 15 days of the College District's request, or as soon as practicable, the College District may deny FMLA leave protection until the recertification is provided. If an employee fails to provide the required recertification, the absence will not be considered protected FMLA leave and the employee will be subject to disciplinary action, up to and including termination, for an unexcused absence.

Employees on leave may be required to periodically report to the College District (every 30 days) regarding their intent to return to work upon completion of leave. If an employee gives unequivocal notice that he/she does not intend to return to work, the leave, entitlement to reinstatement, medical benefits and employment with the College District are subject to termination.

#### **(3) Fitness for Duty - Return to Work Certification**

Prior to reinstatement from leave, employees must submit a written certification from the treating health care provider(s) to Human Resources Department confirming that the employee is released to return to work and is able to perform the essential functions of the job, with or without reasonable accommodation. The health care provider(s) may also be required to designate the essential job functions, if any, which cannot be performed at the time the employee requests reinstatement. An employee will not be reinstated until the return to work certification is received by the College District.

### **Benefits During Leave**

#### **(1) Use of Paid Time Off Benefits**

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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 the FMLA leave (in accordance with the College District's policies) until exhausted. The remainder of the FMLA 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.

The use of any paid time off benefits will not extend the duration of an FMLA leave. Employees may not receive more than one hundred percent of their regular weekly compensation through the use of any combination of paid benefits relating to their employment.

Employees will not accrue service credit or employment benefits during the unpaid portion of FMLA leave.

#### **(2) Healthcare Plan Coverage and Premiums**

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. When accrued sick pay, vacation, emergency leave, STD or other paid time off benefits are being used during FMLA leave, the employee's portion of dependant medical plan premiums and retirement coverage premiums will be deducted from those benefits. If an employee's paid time off benefits are exhausted during an FMLA leave, the employee must make arrangements to continue paying the employee's portion of dependant medical plan premiums directly to the healthcare plan administrator, the Texas Employee Retirement System (ERS).

If an employee on unpaid leave fails to pay the dependant portion of the medical plan premiums within 30 days of a payment due date, the 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.

#### **Reinstatement from FMLA Leave**

If an employee 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

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an employee fails to timely report to the College District after being released by the employee's health care provider, the employee will be subject to dismissal.

Prior to reinstatement from FMLA leave, an employee 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.

The College District will reinstate an employee from FMLA leave to an existing former position, provided the employee seeks reinstatement before the expiration of 12 cumulative weeks of FMLA leave and can perform the essential duties of the position (with or without reasonable accommodation).

If an employee qualifies for reinstatement and the existing former position is not available, the employee will be reinstated to an equivalent position. (The College District may make an exception regarding reinstatement of certain highly compensated, salaried, "key employees"). Refusing an offer of reinstatement to the former or an equivalent position will be treated as a voluntary resignation of employment.

If an employee does not request reinstatement and return to work on or before the expiration of FMLA leave, the employee will be dismissed from employment. If an employee is dismissed under this procedure, the employee would be eligible to reapply for future employment by submitting an application to the College District.

#### **Additional Leave of Absence**

If an employee exhausts FMLA leave and needs additional time off from work for treatment of their own serious health condition, the employee must apply for extended leave under Section 1(c) of this policy *before expiration of the employee's FMLA leave*.

#### **(B) Medical Leave of Absence**

Employees who do not qualify for FMLA leave may apply for or be placed on a medical leave of absence for the treatment of their own on-the-job or off-the-job injury or serious health condition. They will be eligible for medical leave after completing the introductory period, except for on-the-job injuries, for which medical leave can begin immediately.

Medical leave is limited to a maximum of 12 weeks within a "rolling" 12-month period. Medical leave must be taken in a continuous time period and may not be taken in intermittent periods or

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on a reduced work schedule except where medically necessary for absences due to a job-related injury or illness.

#### **Medical Certifications**

Employees must provide an initial medical certification from their healthcare provider under the same procedures as required for FMLA leave (Section 1(A) of this policy). The College District may request a second and third opinion (at its expense) following receipt of the initial medical certification. The employee must provide re-certifications during medical leave under the same circumstances as required for FMLA leave. Prior to reinstatement from medical leave, the employee must provide the College District with a written return-to-work/fitness for duty certification from his/her treating health care provider(s) confirming the employee's release for work and ability to perform job functions (with or without reasonable accommodation). The employee will not be reinstated until the certification is received by the College District. The College District may also require the employee's health care provider(s) to designate the job functions, if any, which cannot be performed at the time the employee requests reinstatement.

#### **Reinstatement from Medical Leave**

If an employee is medically released (full or partial), the employee must report to Human Resources by the *next working day* after the release. Reinstatement from a medical leave is subject to the College District's staffing requirements at the time an employee seeks reinstatement and can resume work. Employees are not guaranteed reinstatement to work or placement in their former or alternate positions or work schedules. An employee who does not request and obtain reinstatement to work before expiration of the medical leave, will be dismissed from employment.

An employee will be reinstated to existing and vacant former position, provided a satisfactory return-to-work/fitness for duty certification is submitted and the employee can perform the job functions (with or without reasonable accommodation). If an employee's former position is not vacant or the employee cannot perform the job functions, the College District will consider the employee, along with other qualified internal and external candidates, for available positions for which, in the College District's opinion, the employee is qualified. The most qualified candidate will be selected for the position. If an employee accepts an alternate position offered by the College District, they will be subject to the pay, benefits, and work schedule for that position.

If no positions are available for which the employee is qualified, or if the employee is not selected for an alternate position or refuses the first position offered by the College District, the employee will be dismissed from employment. If an employee is dismissed under this procedure, the employee would be eligible to apply for future employment by submitting an application to the College District.

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#### **Use of Paid Time Off Benefits During Medical 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 the medical leave in accordance with the College District's policies until exhausted. The remainder of the medical leave would be unpaid unless the employee qualifies for 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% 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 workers' compensation lost wage benefits.

The use of paid time off benefits will not extend the duration of a medical leave. Employees may not receive more than one hundred percent of their regular weekly compensation through the use of any combination of paid time off benefits. Employees will not accrue service credit or benefits during the unpaid portion of a medical leave.

#### **Healthcare Plan Coverage and Premiums**

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

If an employee fails to pay any employee or dependent medical plan premium due during the medical 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.

#### **Additional Leave of Absence**

If an employee exhausts medical leave and needs additional time off from work for medical treatment of their own serious health condition, the employee must apply for an extended leave under Section 1(c) of this procedure *before expiration of the employee's medical leave*.

#### **(C) Extended Leave**

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Employees may qualify for up to 14 weeks of extended leave during a "rolling" 12-month period for treatment of their own serious health condition, whether occurring on-the-job or off-the-job, after exhausting FMLA or medical leave. It is an employee's obligation to apply for extended leave and submit supporting medical documentation, even if the employee is already absent from work on FMLA or medical leave.

To qualify for extended leave, an employee must: (i) exhaust FMLA or medical leave; (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 any pending FMLA or Medical leave.

Extended leave must be taken in a continuous time period and may not be taken in intermittent periods or on a reduced work schedule except where medically necessary for leaves due to a job-related injury or illness.

An employee's combined medical-related absences for FMLA, medical and extended leave are limited to a maximum of 26 weeks within a "rolling" 12-month period. The 26-week limitation on medical-related leaves of absence may require an adjustment in the amount of extended leave available to an employee if he/she has taken both medical and FMLA leaves within the "rolling" 12-month period.

Medical-related leaves may not exceed 26 weeks within a "rolling" 12-month period except where an extension of leave is requested by the employee and granted by the College District (i) as a reasonable accommodation under the ADA; (please refer to Section 1(D) of this policy); (ii) where the employee has accrued unused sick leave (please refer to Section 1 (E) of this policy); or (iii) as otherwise required by law.

#### **Medical Certifications**

Employees must provide an initial medical certification from their healthcare provider under the procedures required for FMLA leave (Section 1(A) of this policy). The College District may request second and third opinions (at its expense) following receipt of the initial medical certification. Employees must provide recertifications during extended leave under the circumstances required for FMLA leave. Prior to reinstatement from medical leave, employees must provide the College District with a written return-to-work/fitness for duty certification from the treating health care provider(s) confirming the employee's release for work and ability to perform the job functions (with or without reasonable accommodation). Employees will not be reinstated until the certification is received by the College District. The College District may also require an employee's health care provider(s) to designate the job functions, if any, which the employee cannot perform at the time the employee requests reinstatement.

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#### **Use of Paid Time Off Benefits During Extended Leave**

An employee's accrued vacation or sick pay, emergency leave, STD benefits or other paid time off benefits must be used during an extended leave in accordance with the College District's policies until exhausted. The remainder of the extended leave would be unpaid. Employees may not receive more than one hundred percent of their regular weekly compensation through the use of any combination of paid time off benefits. The use of paid time off benefits will not extend the duration of an extended leave. Employees will not accrue service credit or paid time off benefits during the unpaid portion of an extended leave.

#### **Healthcare Plan Coverage and Premiums**

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

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

#### **Reinstatement from Extended Leave**

Reinstatement from extended leave will be processed under the terms that apply to medical leaves (Section 1(B) of this policy). Employees are not guaranteed reinstatement to work or placement in the former or alternate positions. If an employee is not reinstated before expiration of the extended leave, the employee will be dismissed from employment except where an extension of leave is requested by the employee and granted by the College District (i) as a reasonable accommodation under the ADA (please refer to Section 1(D) of this policy); (ii) where the employee has accrued unused sick leave (please refer to Section 1 (E) of this policy); or (iii) as otherwise required by law.

If an employee is dismissed under this procedure, the employee would be eligible to apply for future employment by submitting an application to the College District.

#### **(D) Extension of Leave as a Reasonable Accommodation Under the ADA**

If an employee exhausts his/her extended leave but needs an additional reasonable period of absence in order to return to work, the employee may request a reasonable extension of leave under the ADA or other applicable laws. To qualify for a reasonable extension of leave under

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the ADA, an employee must (1) request an extension prior to exhaustion of the extended leave and (2) provide the Human Resources Department with a written statement from the treating health care provider(s) confirming that:

(i.) The employee has a physical or medical impairment that substantially limits a major life activity, temporary, non-chronic impairments, such as broken bones, pregnancy, appendicitis, and non-chronic infections, typically do not qualify as disabilities; and

(ii.) A supplemental leave of a definite, specific duration will allow the employee to return to work and perform the essential function of the job in the near future.

In addition, there must be no other reasonable accommodation that would allow the employee to return to work and perform the essential functions of the job upon exhaustion of the extended leave.

The College District will evaluate timely requests submitted by employees on an individualized basis and grant reasonable extensions of leave in compliance with the ADA and other applicable laws.

#### **(E) Extension of Leave Due to Accrued Unused Sick Leave**

If an employee who exhausts an extended leave and is medically unable to return to work and has accrued, unused sick leave, the employee may request an extension of leave off until the earlier of (i) the date that the employee is medically released to work, or (ii) the employee's accrued sick leave hours are exhausted, or (iii) the employee's combined medical -related leaves (FMLA or medical leave, extended leave and any extension of leave for accrued and unused sick leave hours) total nine (9) months. Employees who are dismissed from employment after exhausting additional time off under Section 1(E) of this policy will not be paid for any remaining accrued and unused sick leave. Requests for reinstatement from extension of leave will be processed under the policies and procedures for medical leave (Section (B) of this policy).

To qualify for an extension of leave due to accrued, unused sick leave, an employee must (1) request an extension prior to exhaustion of extended leave under Section 1(C) of this policy; (2) have accrued and unused sick leave benefits; and (3) provide the Human Resources Department with a written statement from the treating health care provider(s) confirming that the employee needs additional time off from work due to the employee's own medical condition.

## **2. Military-Related**

### **(A) FMLA Qualifying Exigency Leave**

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Employees who are eligible for FMLA leave may request or be placed on FMLA military service member leave if (i) the employee's spouse, son, daughter or parent is on "covered active duty" and (ii) the employee's absence from work is for a "qualifying exigency" related to a family member's military service.

"Covered active duty" means (a) in the case of a member of the regular Armed Forces, duty during the member's deployment to a foreign country; or (b) in the case of a member of the reserve Armed Forces (Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve) duty during the member's deployment to a foreign country under a call or order to active duty.

A "qualifying exigency" means:

- (1) Short-notice deployment: Leave needed to address issues arising from a family's members notification of an impending call or order to active duty 7 or fewer calendar days prior to the date of deployment—leave taken for this purpose can be used for a period of 7 calendar days beginning on the date of the covered military member's notification.
- (2) Military events and related activities: Leave needed to attend official ceremonies, programs, or events sponsored by the military related to the active duty or call to active duty status of a family member; and to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a family member.
- (3) Childcare and school activities: Leave needed to arrange for alternative childcare; to provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis); to enroll a child in or transfer a child to a new school or day care facility; and to attend meetings with staff at a school or a daycare facility when such meetings are necessary.
- (4) Financial and legal arrangements: Leave needed to make or update financial or legal arrangements to address a family member's absence and to act as a family member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on active duty or call to active duty status, and for 90 days following the termination of the covered military member's active duty status.
- (5) Counseling: Leave needed to attend counseling provided by someone other than a health care provider for the employee, a family member and/or a family member's child, provided that the need for counseling arises from the active duty or call to active duty status.

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(6) Rest and recuperation: Leave needed to spend time with a family member who is on short-term, temporary, rest and recuperation leave during the period of deployment—up to five days of leave may be taken for each instance.

(7) Post-deployment activities: Leave needed to attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military within 90 days following the termination of a family member's active duty status; and to address issues arising from the death of a family member while on active duty status.

(8) Additional activities: Leave needed to address other events arising out of a family member's active duty or call to active duty status, provided that the employee and the College District agree that the leave will qualify as an exigency, and agree to both the timing and duration of the leave.

The same rules that apply to FMLA leave also apply to qualifying exigency leaves. Employees are required to complete the pertinent certification form within 15 days of requesting a qualifying exigency leave. The first time an employee requests a qualifying exigency leave, the employee will be required to provide 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.

#### **(B) FMLA Caregiver Leave**

Employees who are eligible 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.

FMLA leave for a "qualifying exigency" may be taken for up to 12 workweeks within a "rolling" 12-month period in a continuous time period, or in intermittent time periods or through a reduced work schedule.

The 30-day notice requirement for medical-related leaves does not apply to qualifying exigency leave for a military service member. However, the employee must give the College District notice of the need for FMLA qualifying exigency leave as soon as practicable.

A "covered service member" means: (i) a 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 (ii) veterans who are undergoing medical treatment, recuperation or therapy for a serious injury or illness and who were 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 they undergo the medical treatment, recuperation or therapy. The medical

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treatment, recuperation or therapy must be related to a serious injury or illness incurred while in the line of duty on active duty in the Armed Forces or which existed before the beginning of military service, and which was aggravated by service in the line of duty while on active duty.

For members of the Armed Forces (including a member of the National Guard or Reserves), a "serious health condition" means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. For veterans who were members of the Armed Forces (including a member of the National Guard or Reserves), a "serious health condition" means (at any time during the five year period described in the definition for "covered service members") a qualifying injury or illness that was incurred by the member in the line of duty on active duty in

the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty itself before or after the member became a veteran).

FMLA leave to care for a "covered service member" who has incurred an injury or illness in the line of duty may be taken for up to 26 workweeks during a 12-month period in a continuous time period, or in intermittent time periods or through a reduced work schedule.

FMLA leave to care for an injured or ill service member, when combined with other types of FMLA-qualifying leave, may not exceed 26 workweeks in a "rolling" 12-month period. The amount of leave for which an employee is eligible to care for a "covered service member" may be reduced if other FMLA leave has been taken during the preceding 12 months.

If leave is taken on an intermittent basis or reduced work schedule to care for a military service member, the College District may transfer the employee during the leave to an alternative position with equal pay and benefits which better accommodates the intermittent or recurring leave schedule.

The same rules that apply to other FMLA leaves also apply to military caregiver leaves under the FMLA. Employees are required to complete the required certification applicable to this type of leave within 15 days of requesting caregiver leave.

#### **(C) Employee Military Leave**

The College District will grant employees a military leave of absence without pay for duty in the U.S. uniformed services in accordance with the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), and other applicable federal, state and local laws. Employees requesting military leave should provide the College District with a copy of their military duty orders as soon as practicable. Employees are required to give the College District

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advance notice of upcoming military service, unless military necessity prevents advance notice or it is otherwise impossible or unreasonable. The military leave will be unpaid. However, the employee may use any available sick pay for the absence.

During military leave, employees may have certain rights to continue participation in the Employee Healthcare Plan as provided by law.

Employees who are on military leave for up to 30 days must return to work on the first regularly scheduled work period after service ends (allowing for reasonable travel time). Employees who are on military leave beyond 30 days must apply for reinstatement in accordance with USERRA and all applicable state laws.

When an employee returns from military leave (depending on the length of military service in accordance with USERRA), the employee will be placed either in the position he or she would have attained if he or she had remained continuously employed or in a comparable position. For the purpose of determining benefits that are based on length of service, the employee will be treated as if he or she had been continuously employed.

### **3. Developmental Leave**

Developmental leave may be granted to eligible College District employees for purposes of study, research, writing, skill upgrading, or other appropriate endeavors, including faculty exchanges. Developmental leave is available only to full-time employees for a maximum of two consecutive academic years.

Developmental leave shall be without compensation. However, all insurance benefits paid by the College District shall continue uninterrupted during the leave period, provided the employee agrees in writing either to return to employment in the College District for one full year or to reimburse the College District the cost of the insurance benefits paid during the leave period.

The duration of developmental leave shall depend upon the parameters of the developmental endeavor, but shall not exceed two consecutive academic years. For faculty members, beginning and ending dates shall generally coincide with the beginning and end of regular and/or summer semesters, in accordance with the need to provide for the least possible disruption of classes.

Requests for developmental leave shall be submitted through regular supervisory channels to the Human Resources Department, and then the Chancellor. Upon return from developmental leave, employees shall be reinstated to their original positions or to comparable positions without loss of seniority, rank, tenure, or accrued benefits, except as specified in this policy.

Employees shall be eligible for additional developmental leave after continuous employment of three years from the end of the previous developmental leave period.

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Periodically, the Chancellor shall provide to the Board an informative report concerning developmental leaves granted to College District employees.

#### **4. Paid Personal Days**

Personal leave is available to all non-faculty employees who work twenty or more hours per week, to all tenure track and tenured faculty members, and to adjunct faculty with full benefits. Two days of noncumulative personal leave, with regular compensation, will be available to qualified employees during each fiscal/academic year. Employees working less than full time will be eligible for personal leave days on a prorated basis.

Personal leave shall accrue to qualified employees at the start of each fiscal/academic year. Personal leave will accrue to new employees as of the day of their initial appointment but will not be available for use until the 91st day after their appointment. Personal leave may be used in the summer. Employees may not take more personal leave than their available personal leave balance.

Employees will not be paid for unused personal leave upon cessation of employment.

Faculty members who request personal leave shall be responsible for working with their department chairs to provide appropriate substitutes for classes from which they will be absent.

#### **Questions**

Employees who have questions regarding eligibility for any leaves of absence or the procedures that apply to a leave, should speak with the Human Resources Department.