
TITLE: **Family and Medical Leave Act (FMLA)**
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Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act of 1993 (FMLA) allows an eligible employee up to 12 weeks of leave in a 12-month period for the listed reasons. In addition to the leave provided under the FMLA as outlined below, there may be other leave entitlements under state law, Whatcom Community College policy or contract that an employee may be entitled to. This policy applies to all employees of Whatcom Community College.

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I. General Provisions

Whatcom Community College will grant up to a total of 12 workweeks of FMLA leave during any 12-month period to eligible employees, in accordance with the Family and Medical Leave Act of 1993, for one or more of the following reasons:

- 1) The birth and care of a newborn child;
- 2) The placement for adoption or foster care of a child with the eligible employee and to care for that child;
- 3) To care for an eligible employee's family member (spouse, son, daughter, parent or domestic partner as defined by WAC 182-12-260 (2)) with a serious health condition; or
- 4) Due to the eligible employee's own serious health condition; or
- 5) Because of any qualifying exigency (as the Secretary of Labor shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.
- 6) SERVICEMEMBER FAMILY LEAVE--an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a

12-month period to care for an eligible employee's family member (spouse, son, daughter, parent, or next of kin) who is 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.

II. Definitions

Domestic Partner means state registered same-sex couples over the age of 18 and heterosexual couples in which one partner is over the age of 62 qualify for a domestic partnership. Eligible couples must also share a common residence.

Family Member includes children, spouse, parents, and domestic partner but not son-in-law, daughter-in-law or parents-in-law.

Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

Parent means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a 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.

In loco parentis – Persons who are *In loco parentis* include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child.

Next of Kin. means the nearest blood relative of that individual.

Covered Servicemember means 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.

Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; **or**
- Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:
 - (1) A health condition (including treatment therefore, or recovery there from) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:
 - treatment two or more times by or under the supervision of a health care provider; **or**
 - one treatment by a health care provider with a continuing regimen of treatment; **or**

- (2) Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; **or**
- (3) A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; **or**
- (4) A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; **or**
- (5) Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

"Health care provider" means:

- doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; **or**
- podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; **or**
- nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law; **or**
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; **or**
- Any health care provider recognized by the employer or the employer's group health plan benefits manager.

Outpatient Status with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to—

(A) a military medical treatment facility as an outpatient; or

(B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

Serious Injury Or Illness in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

III. Eligibility

An eligible employee must meet all of the following conditions:

- 1) The employee must have worked for Whatcom Community College or another Washington state agency or institution of higher education for at least 12 months (need not be consecutive) prior to the commencement of the leave;
- 2) The employee must have been employed for at least 1,250 hours of service in the previous twelve month period immediately preceding the commencement of the leave; and
- 3) The employee must have worked at a work site which employs at least 50 employees within a 75 mile radius.

The 1,250 hour requirement under paragraph 2) does not count paid time off such as time used as annual leave, sick leave, exchange time, personal holiday, compensatory time off, or shared leave.

IV. Leave Coverage and 12-Month Period

Measuring the 12-Month Period

An eligible employee can take up to 12 weeks of leave during a 12-month period. Whatcom Community College will measure the 12-month period forward from the date the requesting employee's first FMLA leave begins. The employee's next FMLA leave year would begin the first time FMLA leave is taken after completion of the previous 12-month period. For example, if an eligible employee's first request for FMLA leave is on October 1, XXX1, for leave to begin on November 1, XXX1, the 12-month period begins on November 1, XXX1. That employee would be entitled to use 12 weeks of FMLA leave between November 1, XXX1, and October 31, XXX2. If that employee uses 12 weeks between November 1, XXX1, and February 1, XXX2, they would not be eligible again until November 1, XXX2. If they next use FMLA beginning April 1, XXX3, their next 12-month period would run from April 1, XXX3, through March 31, XXX4.

Both Spouses Employed by Whatcom Community College

If a husband and wife both work for Whatcom Community College, they may only take a combined total of 12 weeks of FMLA leave in the 12-month period for the purpose of taking leave for the birth of a child, adoption of a child, or placement of a child in foster care, or to care for the employee's parent with a serious health condition, or for servicemember family leave. If either spouse uses a portion of the 12-week entitlement for the above reasons, they would still have their remaining entitlement for other FMLA purposes. For example, if a husband and wife each use six weeks of FMLA to care for a newborn child, they would each have an additional six weeks available for their own serious health condition or to care for a sick child or spouse with a serious health condition.

Accounting for Leave

Use of leave will normally be accounted for on an hourly basis. A full-time employee would thus be entitled to 480 hours of FMLA leave during the 12-month period.

For employees who normally work less than a full-time schedule, the amount of leave will be determined on a pro-rata basis and will be determined based on the employee's status at the time of the request for leave. For example, an employee working on a .75 FTE basis will be entitled to 12 weeks or 360 hours of FMLA leave in each 12-month period.

V. Employee Request for Leave and Employer Designation

FMLA designation is the responsibility of Whatcom Community College. The Whatcom Community College will normally determine eligibility and notify the employee that the leave will be designated as FMLA within two business days, absent extenuating circumstances, of the date the Whatcom Community College receives knowledge that the leave is being taken for a FMLA qualifying reason. The designation can be made either orally or in writing. If given orally, it will be followed up in writing by the next payday that is at least one week away from the oral notification.

It is the employee's responsibility to notify his/her supervisor of the need for leave and to provide reasons for the leave to allow the employer to determine if the leave qualifies for FMLA leave. The employee should also provide the anticipated timing and duration of the leave. The employee should notify his/her supervisor at least 30 days in advance of the need for leave if the need for leave is foreseeable. If the need for leave is not foreseeable, notice must be given as soon as possible. The supervisor will immediately notify the Human Resources Office which will facilitate the FMLA documentation.

The Human Resource Office may inquire further regarding the need for leave if the employee does not initially provide enough information to determine if the leave request qualifies for FMLA designation.

The Human Resource Office will provide the employee with a FMLA request form to be completed by the employee and a medical certificate to be completed by the employee's or family member's health care provider. The employee should return these forms within 15 calendar days after the employee receives them.

The Human Resources Office may require that the eligible employee obtain subsequent recertifications on a reasonable basis.

CERTIFICATION RELATED TO ACTIVE DUTY OR CALL TO ACTIVE DUTY.—The Human Resources Office may require that a request for leave be supported by a certification issued at such time and in such manner as the Secretary of Labor may by regulation prescribe. If the Secretary of Labor issues a regulation requiring such certification, the employee shall provide, in a timely manner, a copy of such certification to the employer.

VI. Intermittent Leave

Intermittent leave or leave on a reduced schedule will be granted if medically necessary for an eligible employee's own serious health condition or to care for a family member with a serious health condition. Medical documentation of the need for the leave on an intermittent basis or for leave on a reduced schedule will be required.

Employees needing intermittent leave or leave on a reduced schedule for foreseeable medical treatment must work with their department and the Human Resources Office to schedule the leave, subject to the approval of the health care provider, so as not to unduly disrupt the department's or Whatcom Community College's operations.

Whatcom Community College, as approved by Human Resources, may choose to grant leave on an intermittent basis for the care of a newborn child or a foster or adopted child. Granting of intermittent leave for this purpose is discretionary and will be determined on a case by case basis. If such leave is granted, the employee and Whatcom Community College must mutually agree to the schedule to be worked before the employee may take the intermittent leave.

Whatcom Community College, as approved by Human Resources, may temporarily transfer an employee using intermittent leave to an alternate position for which the employee is qualified, with equivalent pay and benefits if the alternate position would better accommodate the intermittent schedule.

VII. Substitution of Paid Leave

Whatcom Community College will not require an employee to substitute paid leave for otherwise unpaid FMLA leave. Whatcom Community College employees may use any combination of paid or unpaid leave to which they are entitled to toward the FMLA entitlement. The use of any leave paid or unpaid (excluding compensatory time earned under the Fair Labor Standards Act) for a FMLA qualifying event will run concurrently with, and not in addition to, the use of FMLA for that event. The types of leave that can be substituted for otherwise unpaid FMLA leave include annual leave, sick leave, shared leave, exchange time and/or personal holidays. Leave without pay for an absence covered by worker's compensation will also run concurrently with FMLA.

Substitution of sick leave is allowed only for those purposes that sick leave use is normally allowed for pursuant to state laws or Whatcom Community College policy, as applicable. Compensatory time earned pursuant to the Fair Labor Standards Act will not be counted toward the FMLA entitlement, although an employee is allowed to use compensatory time for a FMLA qualifying event.

VIII. Medical Certification

Medical certification will be required for any request for use of leave for an employee's own serious health condition or to care for a family member with a serious health condition. The employee will be asked to respond to the request for a complete medical certification within 15 calendar days of the request or to provide a reasonable explanation of the delay. Failure to provide the requested certification may result in the denial of continuation of leave. Certification should be provided by using the Medical Certification Form attached. All applicable information should be included.

If Whatcom Community College's Human Resources Office has questions regarding the initial medical certification they may, with a release from the employee, ask their health care professional to contact the employee's health care professional to authenticate or clarify the original certificate.

If Whatcom Community College has reason to question the medical certification, they may elect to seek a second opinion from a health care provider of their choosing at Whatcom Community College expense. If the second opinion conflicts with the first opinion, a third opinion may be obtained at Whatcom Community College expense from a health care provider mutually chosen by the employee and Whatcom Community College. The third opinion will be controlling. The employee will be considered provisionally entitled to leave pending the second and/or third opinion.

Whatcom Community College may ask for re-certification under the provisions of the FMLA. Re-certifications are provided at the employee's expense.

IX. Continuation of Benefits

During approved FMLA leave, Whatcom Community College will continue an eligible employee's health and other benefits at the same level and under the same conditions as if the employee had continued to work. The eligible employee will be required to pay for their portion of their health care and other benefit premiums during their FMLA absence.

During paid leave, Whatcom Community College will continue to make payroll deductions for the employee's share of the health care and other premiums. During unpaid leave the employee must continue to make these payments. Payment should be made to the Payroll department. If the employee on unpaid leave does not pay their share of the premiums, Whatcom Community College may elect to make these payments on behalf of the employee, thus continuing their benefits, and collect the amounts due from the employee upon their return to work. The employee using unpaid FMLA leave will be required to indicate on the FMLA request form how they intend to pay their share of premiums during their absence.

If an eligible employee chooses not to return to work at the conclusion of their unpaid FMLA leave for reasons other than a continued serious health condition of the employee or the employee's family member, or a circumstance beyond the employee's control, Whatcom Community College will require the employee to reimburse Whatcom Community College the amount of health care benefit premiums paid by Whatcom Community College for the employee during the FMLA leave period.

X. Returning to Work

Upon returning to work after the employee's own FMLA qualifying illness, the employee will be required to provide a fitness for duty certificate from a health care provider to the Human Resources Office. The fitness for duty certificate should be job related and consistent with business necessity. A fitness for duty certificate will not be required for intermittent leave usage.

Following absence granted for an approved FMLA event, an employee shall be returned to the same or an equivalent position as the one held immediately prior to the absence.

An employee returning from FMLA leave has no greater entitlement to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave period.

XI. Miscellaneous

Employees should seek assistance from Human Resource Office to determine if they are eligible for other types of leave in addition to the leave covered by this policy; e.g. disability leave, parental leave, leave to care for a sick child or family member with a serious health condition, shared leave, etc.

This policy will be construed in accordance with the FMLA and its accompanying regulations.

To the extent items or aspects of the FMLA or its accompanying regulations are not covered in this policy, those gaps will be construed in accordance with the FMLA and its regulations.

XII. Procedure for Requesting Leave

Employee

Notifies supervisor of the need and reason for leave within 30 days of the need for leave if the need is foreseeable, otherwise, as soon as possible after discovering the need for leave. Provides the anticipated timing and duration of the needed leave. Supervisor to notify Human Resources Office.

Human Resources Office provides the FMLA request form and medical certification form, if necessary. Employee returns these documents to Human Resources Office within 15 days of receiving the forms and the preliminary FMLA designation.

During the leave period, provides supervisor/manager and Human Resources Office with periodic reports on status and intent to return to work as requested

Provides medical re-certification as requested.

Provides a fitness for duty certification at the completion of the leave to the Human Resources Office if it is for the employee's own serious health condition.

Consults with Human Resource Office to determine if any other leave entitlements are available.

Supervisor/Manager

Receives request from employee for leave. Reports the request to the Human Resources Office which may need to make further inquiries if need for FMLA and/or whether the requested leave is FMLA qualifying are not apparent.

Keeps updated with the Human Resources Office and the employee sharing information regarding any determinations.

Human Resources Office

Receives employees request from supervisor for leave. May need to make further inquiries if need for FMLA and/or whether the requested leave is FMLA qualifying are not apparent.

Provides FMLA request form, medical certification form and written notice to the employee of their rights and responsibilities, including need to provide medical verification.

Notifies the employee of their eligibility and preliminary FMLA designation, pending receipt of medical verification, within two business days of acquiring the knowledge that the leave is FMLA qualifying.

Human Resources Office (cont.)

Upon receipt of the completed medical certificate notifies employee that the preliminary leave has been changed to a permanent designation.

Communicates with employee periodically to request reports on status and intent to return to work and shares and coordinates information with supervisor.

Keeps data on FMLA status and usage up to date.

Provides advice and assistance as needed.