



Operating Policy and Procedure

OP 12.004 Family and Medical Leave Act (FMLA) Policy

DATE: August 16, 2023

PURPOSE: The function of this policy is to provide employees with a general description of their rights under the federal Family Medical Leave Act (FMLA). The FMLA entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

REVIEW: Human Resources will review annually.

POLICY/PROCEDURE

1. General Policy

It is Kellogg Community College's ("KCC") policy to comply with state and federal law. This policy outlines an employee's benefits and rights under the federal Family and Medical Leave Act ("FMLA"). The FMLA makes it unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided under the FMLA or to discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding relating to the FMLA.

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law. Nothing in this policy, however, gives the employee greater rights than what is required by law, including greater rights to continued employment than the employee would have had if the employee had not taken FMLA leave. The FMLA and its implementing regulations are very detailed. Specific questions regarding this policy should be directed to the Chief Human Resources Officer.

a. Eligibility

You may be eligible for protected leave under the FMLA if you meet each of the following three requirements:

- i.** You have completed 12 months of employment with KCC. The 12 months does not need to be continuous. If there is a break in service of seven years or more between earlier employment and your current tenure with KCC, however, the earlier employment will not count except in limited circumstances. In addition, individuals on leave for active military service may be entitled to credit (as time worked) for their time on military leave under certain circumstances.
- ii.** You have worked at least 1,250 hours in the 12 months leading up to the leave. Generally, only time actually worked counts toward this requirement.

Individuals on leave for active military service may be entitled to credit (as time worked) for their time on military leave under certain circumstances.

- iii. At least 50 employees work within 75 miles of your worksite.

An employee who does not meet all three of these requirements may be entitled to take time off under other policies. The employee will not, however, be entitled to FMLA-protected leave.

b. Qualifying Reasons for FMLA Leave

Eligible employees are entitled to take FMLA for any of the following reasons:

- i. the birth of a child and to care for the newborn child within 12 months of the child's birth;
- ii. the placement of a child with the employee for adoption or foster care and to care for the newly placed child within 12 months of placement;
- iii. to care for the employee's spouse, child, or parent if the person being cared for has a serious health condition;
- iv. a serious health condition of the employee that makes the employee unable to perform the essential functions of their position (which may include incapacity due to pregnancy, prenatal care, or childbirth);
- v. any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on "covered active duty" or has been notified of an impending call or order to covered activity duty status; **or**
- vi. to care for a covered servicemember who is being treated for a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin.

i. Definition of "Serious Health Condition"

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment. If you are not sure whether your condition qualifies for FMLA leave, you may apply for such leave, and after review of appropriate medical documentation, KCC will advise you of whether you are covered under this provision.

2. *Definition of “Qualifying Exigency”*

Qualifying exigencies related to being on active military duty or to a call to active military duty may include addressing issues arising out of a short notice deployment, attending certain military events, arranging for alternative child care, addressing certain financial and legal arrangements, attending certain counseling sessions, spending time with a covered service member who is on short-term temporary rest and recuperation leave, attending post-deployment reintegration briefings, and caring for the parent of a military member who is incapable of self-care.

3. *Definition of “Covered Active Duty” or “Call to Covered Active Duty Status”*

“Covered active duty” or “call to covered active duty status” for members of a regular component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country. For members of the reserve components of the Armed Forces (including members of the Army National Guard and Reserves and retired members of the Regular Armed Forces or Reserves), it means duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation as defined in section 101(a)(13)(B) of title 10, United States Code.

4. *Definition of “Serious Injury or Illness”*

For a current servicemember of the Armed Forces (including the National Guard or Reserves), a “serious injury or illness” that was incurred by the member in the line of duty on active duty in the Armed Forces (or that existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and renders the member medically unfit to perform the duties of the member’s office, grade, rank, or rating. For a covered veteran, a “serious injury or illness” is a qualifying injury or illness that was incurred by the veteran in the line of duty on active duty in the Armed Forces or that existed before the veteran’s active duty and was aggravated by service in line of duty on active duty and that manifested itself before or after the member became a veteran, and that is either (a) a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember’s office, grade, rank, or rating; (b) a physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the need for military caregiver leave is related to that condition; (c) physical or mental condition that substantially impairs the veteran’s ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or (d) an injury, including a psychological injury, on the basis of which the veteran is enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

5. *Definition of “Covered Service Member”*

A “covered service member” is a current member of the Armed Forces (including National Guard and Reserves) who, as the result of a serious injury or illness, is (a) on the temporary disability retired list; (b) undergoing medical

treatment, recuperation, or therapy for the serious injury or illness; or (c) assigned to a military medical treatment facility as an outpatient or otherwise be receiving outpatient care at a unit established for members of the Armed Forces. This provision also applies to veterans (including a member of the National Guard or Reserves) who were discharged or released under conditions other than dishonorable within the five years before the family first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

c. Benefits and Protections of FMLA Leave

Generally, the FMLA allows eligible employees to take an unpaid leave of absence for a period not to exceed 12 workweeks in the applicable 12-month period, which, at KCC, is a “rolling” 12-month period measured backward from the date of any FMLA leave usage. Leave for the birth or adoption of a child must be taken within one year of the qualifying event. The length of time allowed for leave for qualifying exigencies will depend on the type of qualifying event. Where leave is necessary for the care of a covered service member with a serious injury or illness, leave may be taken for up to 26 workweeks during a single 12-month period beginning with the first date of leave.

Although the law indicates an employee is entitled to 12 (or 26) workweeks of unpaid leave of absence, unless an applicable Collective Bargaining Agreement provides otherwise, KCC has the right and shall require its employees to use their accumulated vacation, sick leave and/or other forms of paid time off as part of and to cover their leave. Thereafter, unless the employee qualifies for workers' compensation or short-term disability benefits, the leave will be unpaid. However, this does not extend the leave beyond the 12 work weeks (or 26 work weeks where applicable). You may be required to provide additional information in accordance with KCC’s normal paid leave policies in order to receive pay during this time.

Leave for the birth or placement of the employee’s child, or to care for the child within 12 months of the child’s birth or placement, may not be taken intermittently or on a reduced leave schedule. If medically necessary, however, leave for the employee’s own serious health condition or to care for a seriously ill spouse, child, or parent may be taken intermittently or on a reduced leave schedule. In addition, leave for “qualified exigencies” may also be taken on an intermittent or reduced leave schedule basis. Whenever possible, you must schedule intermittent leave or reduced schedule leave that will create the least disruption to KCC’s operations. In addition, under certain circumstances, KCC may temporarily transfer you to another position or shift (with equal pay and benefits) while you are on intermittent leave.

Total time off for a leave taken as a reduced leave schedule or intermittent leave may not exceed 12 weeks (or 26 weeks where applicable) in the applicable 12-month period.

Spouses who are both employed by KCC may be limited to a combined total of 12 workweeks of leave during any 12-month period if the leave is taken for the birth of the employee’s son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement, or to care for the employee’s parent with a serious health condition. Similarly, spouses who are both employed by KCC may be limited to a combined total

of 26 workweeks of leave during the applicable 12-month period to care for a covered service member with a serious injury or illness.

During the FMLA leave, KCC will maintain an employee's health benefits at the same level as if the employee had continued working. KCC will continue to pay its portion of the health insurance premiums for an eligible employee during the period the employee is on qualified leave. The employee must also continue to pay their share of the premium. If an employee's health care premium is more than 15 days late, KCC will notify the employee in writing. The employee's health care insurance coverage will be canceled if the premium payment is more than 30 days late. Thereafter, employees may have the opportunity to continue health insurance at their own cost under the COBRA law, if applicable. Your responsibilities regarding payment of your portion of plan premiums will be explained to you at the time your leave is granted.

KCC may recover its share of premiums paid to maintain an employee's health benefits during FMLA leave if the employee fails to return to work after the FMLA leave expires for a reason other than the continuance, recurrence, or onset of a serious health condition, or for other circumstances outside the control of the employee.

Unless an applicable Collective Bargaining Agreement provides otherwise, during the unpaid leave, the employee shall not accrue employment benefits such as vacation pay, sick pay, paid time off, etc. Except where accumulated vacation, sick days, and/or paid sick leave is used concurrently with an employee's unpaid FMLA leave, employment benefits accrued by the employee up to the date on which the FMLA leave of absence begins will not be lost.

KCC may require an employee on FMLA leave to report periodically on their status, the intention of the employee to return to work, and periodic recertification of the medical condition. An employee taking leave due to the employee's serious health condition is required to obtain certification that the employee is able to resume work prior to the return from their FMLA leave. A medical provider statement of release to work (i.e., "fitness-for-duty") shall be provided by the employee to KCC prior to the employee returning to work after FMLA-qualifying leave. The employee is to report to their supervisor before beginning work.

Employees who return to work from an FMLA-qualifying leave are entitled to return to their former position or a position equivalent in pay, benefits, and other terms and conditions of employment.

d. Notice of Need for FMLA Leave

If you believe that you need FMLA leave, you must do the following:

i. *Foreseeable Absence*

When the necessity of leave is foreseeable (such as when leave is taken for the expected birth or placement of a child, to care for the child within twelve (12) months after the birth, or for planned medical treatment(s)), the employee must provide KCC **at least thirty (30) days notice of the employee's intention to take leave**. If 30 days' notice is not practicable, then you must provide notice as soon as is practicable. If the dates of the leave change, you must advise KCC of such a change as soon as practicable. Notice of requests for FMLA leave

should be in writing when circumstances permit and submitted to Human Resources. In the notice/request, you must provide KCC with sufficient information to understand that you have a condition that qualifies for FMLA leave and must let KCC know the anticipated timing and duration of the leave. This information may include that you are unable to perform your job functions, that a family member is unable to perform daily activities, that hospitalization or continuing treatment is necessary, or that circumstances support the need for military family leave.

If you are seeking FMLA leave because of scheduled or planned medical treatment, you must consult with your immediate supervisor to schedule the treatment so as not to unduly disrupt KCC's operations.

ii. *Unforeseeable Absence*

Where the need for leave cannot be foreseen, you must provide the necessary notice described above as soon as practicable upon learning of the need for leave. While such notice can be provided verbally, it must include the same information necessary for KCC to understand that the request is for FMLA leave. **You will be expected to follow and comply with KCC's normal call-in procedures and notice requirements.** Calling in "sick" will not be sufficient notice to trigger FMLA benefits or protections.

iii. *Certification Establishing Need for FMLA Leave*

Once you request FMLA leave, you will be advised of your eligibility for such leave. You may also be required to provide certain information, such as medical certification, to determine whether you have a qualifying reason for FMLA leave. At the time you request leave, you will be provided additional information regarding your FMLA rights and responsibilities. You will be advised in writing whether your FMLA request has been granted and, if it is being denied, the reasons for the denial.

This certification must be provided to Human Resources within 15 days after it is requested and must include the date the condition began, its probable duration, appropriate medical facts within the knowledge of the health care provider regarding the condition, and a statement the employee is unable to perform their job function or is needed to care for a sick family member for a specified time. An employee must obtain the appropriate certificate form(s) from Human Resources.

FAILURE TO PROVIDE THE NECESSARY NOTICE OF THE NEED FOR FMLA LEAVE OR TO PROVIDE THE NECESSARY DOCUMENTATION SUPPORTING THE LEAVE WITHIN THE TIME REQUIRED MAY RESULT IN YOUR FMLA LEAVE BEING DELAYED OR DENIED ALTOGETHER.

KCC may require, at its own expense, a second medical opinion from a health care provider designated by KCC but not employed on a regular basis by KCC. In the event of a dispute concerning the second certification, KCC may require, at its own expense, a third opinion from a healthcare provider. The employee

and KCC must agree on the selection of the third healthcare provider whose opinion is binding on both parties.

KCC may require the employee to obtain subsequent re-certification on a reasonable basis.

e. Miscellaneous Provisions

Any time off during which an employee is receiving workers' compensation benefits or benefits under any short-term disability plan will be counted as part of the 12 workweeks allowed under the FMLA.

When an employee is off work due to the Family and Medical Leave Act provisions, the employee shall have no other employment. Thus, an employee on FMLA or any other medical leave is not allowed to work for another employer, including self-employment, during the absence.

Employees who knowingly misrepresent facts in order to be granted FMLA leave may be subject to discipline, up to and including termination.

Absent extraordinary circumstances or other reasons protected by law, an employee who fails to return to work on the first business day after the expiration of the FMLA leave period will be considered a voluntary quit.

2. Forms

- a. Forms are available online or in Human Resources.

3. Roles and Responsibilities.

- a. All *employees* have the responsibility to become familiar with and abide by the federal regulations, the policies of the Board, administrative procedures, and regulations.
- b. The *employee's immediate supervisor* is responsible for determining the facts and communicating with the employee and Human Resources.
- c. *Human Resources* is responsible for providing guidance, training, and/or resources to assist with understanding, interpreting, and implementing this policy.

4. Persons/Departments Affected:

- a. All eligible employees.

5. Related Information

- a. <https://www.dol.gov/agencies/whd/fmla>

6. Right to Change Policy. KCC reserves the right to interpret, change, modify, amend, or rescind this policy, in whole or in part, at any time, without prior notice or the employee's consent.

7. Approval Date: August 16, 2023

8. Past Revisions