

# Family and Medical Leave

## Purpose

In compliance with the Family and Medical Leave Act of 1993 (FMLA) and the Vermont Parental and Family Leave Act, the College grants up to twelve weeks of unpaid leave to an eligible employee during a rolling 12-month period. On 1/28/2008 the FMLA was amended to allow for 26 weeks of leave to care for a close family member injured while on active military duty.

## Policy Statement

This policy is designed to offer assistance by providing job-protected leave to eligible employees for certain family and medical reasons in accordance with the Family and Medical Leave Act of 1993 (FMLA). The leave may be unpaid, paid or a combination of unpaid and paid depending on the circumstances as specified in this policy.

## Eligibility

In order to qualify for FMLA leave, the employee must meet both of the following conditions:

The employee must have worked for Middlebury College at least 12 months, or 52 weeks. The 12 months, or 52 weeks, need not have been consecutive.

The employee must have worked at least 1,250 hours during the 12-month period immediately preceding the date when the leave would begin.

FMLA leaves of absence can be requested for any of the following reasons:

The birth of a child and in order to care for that newborn child, within one year of the birth;

The placement of a child for adoption or foster care, within one year of the initial placement. Leave may be taken prior to the event if necessary to arrange for the event;

To care for a spouse, domestic/civil union partner, child, parent, or parent-in-law with a serious health condition;

The serious health condition of the employee that renders the employee unable to perform the essential functions of his/her position;

Any "qualifying exigency" arising from a spouse, son, daughter, or parent's active military duty or notice of an impending call to active duty; or

To care for a spouse, son, daughter, parent, or nearest blood relative seriously injured while on active military duty and unable to perform the duties of the member's office, grade, rank, or rating (service member provision).

The College will require an employee to provide a health care provider's certification of the serious health condition. For purposes of this policy, a "serious health condition" is defined as any illness, injury, impairment, or physical or mental condition that involves:

- A period of incapacity of more than three consecutive calendar days **and** any treatment/period of incapacity that also involves:

1. Treatment two or more times within 30 days by HCP (in person). Must have first visit within seven days of first incapacity;

**OR**

2. Treatment on at least one occasion and regimen of continuing treatment under HCP;

- Pregnancy or pre-natal care inpatient care;
- Any period of incapacity or treatment for incapacity due to chronic serious health condition. Must have two or more visits to provider per year;
- Permanent or long-term condition due to a condition for which treatment may not be effective;
- Any absence to receive multiple treatments by a HCP for restorative surgery, chemotherapy, physical therapy, dialysis.

## **Duration of FMLA Leave**

An employee may take FMLA leave in consecutive days or weeks, use the leave intermittently, or, under certain circumstances, use the leave to reduce the workweek or workday, resulting in a reduced-hour schedule. In all cases **except the military caregiver provision**, the leave may not exceed a total of 12 weeks over a rolling 12-month period and must be properly documented. The military caregiver provision allows for a one-time entitlement to 26 weeks in a single 12 month period beginning on first day the EE takes caregiver leave and ending 12 months later regardless of normal 12 month period for FMLA leave. If 26 weeks are not used, the rest of time is forfeited.

For the birth, adoption, or foster care of a child, the College and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced-hour schedule. If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the College before taking intermittent leave or

working a reduced-hour schedule. If this is not possible, then the employee must provide medical certification that the use of the leave is medically necessary.

The College may transfer an employee temporarily to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.

## **Health Care Provider Certification**

The College will ask for certification of the serious health condition from the appropriate health care provider. The employee must provide such documentation within 15 days of the request for leave, or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Completing an approved form, which is available in the Human Resources Office, may provide medical certification.

Certification of the serious health condition shall include: the date when the condition began, its expected duration, and a brief description of treatment. For medical leave for the employee's own medical condition, the certification must also include a statement that the employee is unable to perform work of any kind or a statement that the employee is unable to perform the essential functions of the employee's position. For a seriously ill family member, the certification must include a statement that the patient requires assistance and that the employee's presence would be beneficial or desirable.

If the employee plans to take intermittent leave or to work a reduced schedule, the certification must include dates and the duration of treatment and a statement of medical necessity for taking intermittent leave or working a reduced schedule.

The College has the right to ask for a second opinion if it has reason to doubt the certification. The College will pay for the employee to get a certification from a second doctor, whom the College will select.

If necessary to resolve a conflict between the original certification and the second opinion, the College will require the opinion of a third doctor. The College and the employee will jointly select the third doctor, and the College will pay for the opinion. This third opinion will be considered final.

## **Employee Status and Benefits During FMLA Leave**

While an employee is on leave, the College will continue his/her health benefits during the leave period at the same level and under the same conditions as if he/she had continued to work. The employee continues to accrue seniority as well as CTO.

Under current policy, all employees pay a portion of the cost of health insurance. While an employee is on paid leave, the College will continue to make payroll

reductions/deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Human Resources Office by the first day of each month.

If the employee chooses not to return to work for reasons other than a continued serious health condition, the College may require the employee to reimburse the College the amount it paid for the employee's health insurance premium during the leave period.

If the employee contributes to a life insurance, disability, or retirement plan, the College will continue making payroll deductions/reductions while the employee is on paid leave. While the employee is on unpaid leave, the employee must continue to make those payments. If the employee does not continue these payments, the College will recover the payments at the end of the leave period, in a manner consistent with the law.

## **Use of Paid and Unpaid FMLA Leave**

The FMLA policy allows an employee to take up to 12 weeks of unpaid leave within a 12-month rolling period. An employee who is taking leave under the FMLA policy may choose to use their accrued CTO or sick leave reserve to supplement the unpaid leave of absence. For employees taking leave for the birth of a child, the six weeks of paid leave offered under the Staff Parental Leave Policy will run concurrently with the FMLA leave of absence.

## **Employee Status After FMLA Leave**

An employee who takes leave under this policy will be able to return to the same job or a job with equivalent status, pay, benefits, and other employment terms. The College may require that an employee present a medical certification of fitness prior to returning to work when the absence was caused by the employee's serious health condition. The release to work also must address in detail any period of restrictions in the work activity. The College may delay restoring the employee to employment without such certification.

## **Procedure for Requesting FMLA Leave**

Except where leave is not foreseeable, every employee requesting leave under this policy must submit the request in writing to the Human Resources Office, with a copy to his or her immediate supervisor.

The Employee must give the College seven days' notice of anticipated short-term leave and 30 days' notice for FMLA leave. If it is not possible to give the appropriate notice, the employee must provide as much notice as is possible. An employee undergoing planned medical treatment is required to make a reasonable effort to schedule the treatment to minimize disruption to the College's operations.

If an employee fails to provide the appropriate notice for foreseeable leave, with no reasonable excuse for the delay, the leave request may be denied for seven or 30 days from the date the College received notice. Once the appropriate documentation has been submitted to the Human Resources office, a determination will be made as to whether or not the employee is qualified for leave under this policy and notice of the determination will be given to the employee.

While on approved leave, the employee is requested to report periodically to the College regarding the status of the medical condition and his/her intent to return to work. If an employee fails to return to work at the end of the FMLA leave, the College will assume that the employee has resigned.

## **Procedure for Return to Work**

In the case of an employee's medical condition, the College will require a certificate from the doctor authorizing the employee to return to work. The release to return to work also needs to address in detail any period of restrictions in work activity.

## **Approved Leaves of Absence**

An approved leave of absence is an approved period of time away from work after which the employee has the right to be re-employed in a position of comparable status and pay.

## **Short-Term Parental and Family Leave**

According to the Vermont State Parental and Family Medical Leave Act, an employee may take up to four hours of unpaid leave (or paid if accrued) in any 30-day period for any of the following reasons:

To participate in preschool or school activities directly related to the academic educational advancement of the employee's child, stepchild, foster child, or ward that lives with the employee;

To attend or accompany the employee's child, stepchild, foster child, or ward, or the employee's parent, spouse, domestic partner/civil union partner, or parent-in-law to routine medical or dental appointments;

To accompany the employee's child, stepchild, foster child, ward, or the employee's parent, spouse, domestic partner/civil union partner, or parent-in-law to other appointments for professional services related to his or her care and well-being; or

To respond to a medical emergency involving the employee's child, stepchild, foster child, or ward who lives with the employee, or the employee's parent, spouse, domestic partner/civil union partner, or parent-in-law.

The supervisor, in his or discretion may deny requests for short-term leaves which are made less than seven days before a leave is to be taken except in the case of an emergency, meaning circumstances where the seven-day notice could have significant adverse impact on the employee's family member.