

## Medical Leave: FMLA

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### **OPERATIONAL POLICY STATEMENT**

The federal Family and Medical Leave Act of 1993 (FMLA) as amended, requires Yavapai College, to provide unpaid leave to eligible employees. The two types of leave available include the basic 12-week leave entitlement (Basic FMLA Leave) as well as two forms of military family leave entitlements (Military Family Leave). The College has adopted this operational policy to implement the terms of the FMLA. The general FMLA provisions are posted at each Campus and are available on the College Human Resources website. If there is a conflict between this operational policy and the law, as written or subsequently amended, the law shall govern.

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### **PROCEDURE**

#### **Eligibility for FMLA Leave:**

An eligible employee is an individual who has been employed by the College at least 12 months prior to the commencement of the leave, has worked at least 1,250 hours during the 12-month period prior to the leave, and is employed at a worksite with at least 50 employees within 75 miles of that worksite. An employee will be notified within five business days from the employee's request for leave of the College's determination as to whether or not the employee is an "eligible employee" for purposes of FMLA leave.

#### **Basic FMLA Leave:**

Eligible employees are entitled to a total of 12 weeks of unpaid leave during each leave year for the reasons listed below. A leave year is defined as a rolling 12-month period measured backward from the date an employee uses any FMLA leave.

Eligible employees may take FMLA Leave for the following qualifying reasons:

1. To care for, or bond with, the employee's son or daughter during the first 12 months following birth;
2. For time off related to the placement with the employee of a child for adoption or foster care to bond with the newly placed child within one year of placement;
3. To care for a spouse, son, daughter, or parent ("covered family member") with a serious health condition; including incapacity due to pregnancy or for prenatal medical care; or,

4. Because of the employee's own serious health condition that renders the employee unable to perform the essential functions of his or her job, including incapacity due to pregnancy or for prenatal medical care.

A "serious health condition" includes an illness, injury, impairment or physical or mental condition that involves either an overnight stay in a medical care facility, or a period of incapacity of more than three consecutive calendar days with continuing treatment by a health care provider. A serious health condition generally does not include cosmetic treatments or common illnesses such as the cold or flu, absent complications. Whether or not an illness or injury is considered a "serious health condition" will be determined based on all of the facts and circumstances, including medical documentation, and in accordance FMLA regulations.

Married couples who are both employed by the College and eligible for FMLA Leave may take a combined total of 12 week's leave during any 12-month period for qualifying reasons 1 and 2 or to care for the same individual pursuant to reason 3 above.

FMLA coverage may also exist under the concept of "in loco parentis", in which someone takes on the role of a parent. For example, if an employee (such as a sibling or grandparent), has day-to-day responsibilities to care for or financially support a child even though there is no legal or biological parental relationship, then the employee may be eligible for FMLA to care for that child.

Likewise, someone who is not otherwise a covered family member may have taken care of the employee when the employee was a child, so the employee may be able to take FMLA to care for that individual if he or she has a serious health condition. Again, eligibility for FMLA will depend upon the facts and circumstances of the affected employee's individual situation.

### **Military Family Leave:**

There are two types of Military Family Leave available: Qualifying Exigency Leave and Military Caregiver Leave.

1. **Qualifying exigency leave.** Eligible employees may use up to 12 weeks of FMLA Leave to address certain qualifying exigencies, which are listed below. Leave may be used if the employee's spouse, son, daughter, or who is a member of the Armed Forces (including U.S. National Guard Reserves) is on covered active duty or has been notified of an impending call or order to covered active duty. If an employee takes Qualifying Exigency Leave and other Basic FMLA Leave during the rolling 12-month period, the combined leave time may not exceed a total of 12 weeks.

An eligible employee with a family member on covered active duty may take FMLA Leave for the following qualifying exigencies:

- A. Issues arising from short-notice deployment (i.e., deployment when 7 or fewer days of notice):
- B. Attending certain military events (i.e., military briefings or ceremonies);
- C. Arranging for alternative child care for the military member's child:
  - a. The Military member must be the parent, spouse or child of the employee taking leave; and,

- b. The child for whom the employee is arranging or providing care must be the child of the military member.
- D. Addressing certain financial and legal arrangements;
- E. Spending up to 15 calendar days with a military member who is on rest and recuperation leave;
- F. Attending certain counseling sessions for the employee, the military member, or a child of the military member, regarding the call to active duty;
- G. Attending post-deployment activities (available for up to 90 days after end of the covered service member's active duty status), or to attend to issues arising from the death of a military member while on covered active duty;
- H. To provide or arrange for certain parental care activities for the military member's parent who is incapable of self-care:
  - a. The employee does not need to be related to the military member's parent;
  - b. The military member must be the parent, spouse or child of the employee; and,
  - c. The parent must be the parent of the military member.
- I. Other activities arising out of the service member's active duty or call to active duty and agreed upon by the College and the employee

Covered Active Duty

1. For members of the Regular Armed Forces, "covered active duty" means duty during the deployment to a foreign country.

For members of the U.S. National Guard and Reserves, "covered active duty" means duty during deployment to a foreign country in support of a contingency operation.

2. **Military Caregiver Leave.** This leave permits eligible employees who are the spouse, child, parent or next of kin of a covered service member with a serious injury or illness, which was incurred in the line of duty, to take up to 26 weeks of FMLA Leave to care for the covered service member during a single 12-month period.

"Next of kin" refers to the service member's nearest blood relative, other than the service member's spouse, parent, son or daughter.

The "single 12-month period" for Military Caregiver Leave begins on the first day the employee takes leave and ends 12 months later, which is different than the rolling 12-month period applied for all other FMLA Leaves.

An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the "single 12-month period," but no more than 12 of the 26 weeks may be for reasons other than to care for a covered service member. If the employee had taken Basic FMLA or Qualifying Exigency Leave during the rolling 12 month period, then less than 12 weeks of those types of leave would be available during the "single 12-month period." For example, if the employee had already taken 5 weeks of FMLA for a personal serious health condition when the Military Caregiver Leave began, the employee would be entitled to no more than 7 weeks of FMLA for reasons other than to care for a covered service member.

### **Covered Service Member**

1. **Current Service Member** – A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list for serious injury or illness incurred in the line of duty; or,
2. **Veteran** – A covered service member is a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness incurred in the line of duty, and who was discharged within the previous five years before the employee takes Military Caregiver Leave to care for the veteran.

Married couples who are both employed by the the College and eligible for FMLA Leave may take a combined total of 26 weeks of Military Caregiver Leave in a single 12-month period.

### **Intermittent or Reduced Schedule Leave:**

Some forms of FMLA Leave can be taken intermittently or on a reduced schedule. Both types of Military Family Leave, Basic FMLA Leave to care for a covered family member, and Basic FMLA Leave for the employee's own serious health condition may all be taken intermittently, depending on the individual circumstances. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the College's operations.

Leave may not be taken on an intermittent basis when used to care for the employee's own child during the first year following birth, or to care for a child placed with the employee for foster care or adoption, unless both the College and the employee agree to such intermittent leave. Such leave is subject to the supervisor's approval in consultation with Human Resources.

The College may temporarily transfer an employee on intermittent or reduced-schedule leave to an available alternative position that will better accommodate the recurring leave and which has equivalent pay and benefits.

### **Request for Leave – Employee Responsibility**

1. Whenever possible, requests for FMLA Leave should be submitted to Human Resources using the Request for Family/Medical Leave Form available from Human Resources.
2. If the need to use FMLA leave is foreseeable, the employee must give the College at least 30 days' prior notice of the need to take leave. When 30 days' notice is not possible, the employee must give notice as soon as practicable (within 1 or 2 business days of learning of the need for the leave, except in extraordinary circumstances). Failure to provide such notice may be grounds for delaying the start of the FMLA leave.
3. Failure to follow the usual notice and procedural requirements for requesting leave and calling in absences may be grounds to delay or deny the leave.
4. When submitting a request for leave, the employee must provide sufficient information for

the College to determine if the leave might qualify as FMLA Leave, which may include that the employee is unable to perform job functions; that a family member is unable to perform daily activities; that the employee or family member needs hospitalization or continuing treatment by a healthcare provider; or the circumstances supporting the need for Military Family Leave. In addition, the employee must provide the anticipated date when the leave would start, as well as, the possible duration of the leave.

5. Employees must inform the College if the requested leave is for a reason for which FMLA leave was previously taken or certified.
6. Employees will be required to provide documentation of the family relationship when leave is requested to care for a family member.
7. Employees will be required to provide appropriate documentation or certification to support either form of Military Family Leave.
8. If the employee is requesting leave because of the employee's own or a covered relation's serious health condition, the employee and the relevant healthcare provider must supply appropriate medical certification and periodic recertification supporting the need for the leave.
  1. Employees may obtain Medical Certification forms from the Human Resources Department. When the employee requests leave, the College will notify the employee of the requirement for medical certification and when it is due (no more than 15 days after the employee requests leave).
  2. If the employee provides at least 30 days' notice of medical leave, he or she should also provide the medical certification before leave begins.
  3. Failure to provide requested medical certification in a timely manner may result in denial of leave until it is provided.
  4. The College, at its expense, may require an examination by a second healthcare provider designated by the College, if it reasonably doubts the medical certification initially provided. If the second healthcare provider's opinion conflicts with the original medical certification, the College, at its expense, may require a third, mutually agreeable, healthcare provider to conduct an examination and provide a final and binding opinion.
  5. The employee must contact the College every 30 days regarding the status of the condition and his or her intention to return to work. The College may require subsequent medical recertification. Failure to provide requested certification, except in extraordinary circumstances, may result in the delay of further leave until it is provided. In addition, the employee must give notice as soon as practicable (within 2 business days, if feasible) if the dates of the leave change, are extended, or were unknown initially.

**Request for Leave - College Responsibilities:**

Within five business days of when an employee requests leave, the College will inform the employee whether or not eligibility requirements are met and will include details of any additional required information. The College will inform the employee in writing if the leave is designated as FMLA,

and provide information on the amount of leave that will be counted against the employee's 12 or 26 week entitlement.

**Pay and Benefits During Leave:**

FMLA leave under this operational policy is generally unpaid leave. If, however, the employee is eligible for any paid leave (e.g., sick leave pay, vacation pay, personal days, worker's compensation), the employee will be required to use the paid leave during FMLA Leave.

Paid leave will run concurrently with and be counted toward the employee's total 12-week or 26 week period of FMLA leave.

In no case can the substitution of paid leave time for unpaid leave time result in the receipt of more than 100 percent of an employee's salary. This may be applicable when, for example, the employee's own serious health condition is the reason for the leave and the employee is receiving workers compensation benefits. In that situation, sick leave pay (if available) will supplement the workers' compensation benefits to bring the employee's pay to 100 percent of salary, but no more.

If intermittent leave is unpaid (other paid leaves have been exhausted or do not apply), the College will reduce the employee's salary based on the amount of time actually worked. Different rules may apply for salaried exempt employees. Contact the Human Resources Department for more information.

During the FMLA Leave, the College will maintain the employee's benefits as if the employee continued to be actively employed. Use of FMLA Leave will not result in the loss of any employment benefit that accrued prior to the start of the employee's leave.

1. While on a paid status the College will continue to make deductions for an eligible employee's health coverage (medical, dental & vision); life insurance, disability benefits, retirement contributions and all other payroll deductions; the employee continues to accrue paid leave.
2. During an unpaid leave it is the employee's responsibility to make payment arrangements in advance directly with the Payroll Department for health coverage (medical, dental, & vision) dependent premiums and other applicable deductions. Retirement contributions and savings account contributions stop with the last paycheck; the employee does not accrue paid leave time. Continued healthcare coverage may be affected if payments are not received as arranged.

If the employee voluntarily chooses not to return to work when the FMLA Leave expires, the College may recover premiums paid for maintaining an employee's health coverage

**Return from Leave**

Fitness-for-Duty Certification:

Before returning to work following FMLA Leave for the employee's serious health condition, the employee will be required to present a fitness-for-duty certification from his/her health care provider verifying that the employee is medically able to resume work, is able to perform the essential functions of his or her job, and any restrictions on the employee's ability to work.

Restoration Rights:

Upon return from FMLA Leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. Key employees and employees whose positions were eliminated by unrelated conditions may not be able to return to the same or similar position. Employees will be notified at the time leave is granted if they are considered a “key employee.”

Inability to Return from Leave:

If an employee is not able to return to work at the end of the FMLA entitlement period but is granted additional, non-FMLA leave, the College cannot guarantee that the employee will be placed in any position at the conclusion of that leave. If the employee is not eligible for additional, non-FMLA Leave, the employee’s employment will end as a voluntary separation. Prior to ending the employee’s employment, the Human Resources Department will attempt to engage the employee in an interactive discussion to explore options, if any, for a return to work.

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**RELATED INFORMATION**

[Request for Family Medical Leave Form](#)

[U.S. Department of Labor – Family and Medical Leave Act Information](#)

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**POLICY HISTORY**

Formerly 2.3.6.2, Adopted 6/4/2009

Revised to Policy 2.12 in 10/2014

Revised 5/04/2018

Revised to "Operational" Policy 3/5/2021

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