

EvCC3300: FAMILY AND MEDICAL LEAVE (FMLA) POLICY

Original Date: January 1, 2009

Revision Date: November 19, 2013

Policy Contact: Vice President of Administrative Services

The federal Family and Medical Leave Act (FMLA) provides job protected leave and benefits coverage entitlements to employees who meet FMLA eligibility requirements. The entitlements and eligibility requirements are described in the table below.

Family Member Definition

The FMLA has its own definition of "family member". For purposes of the FMLA, Everett Community College has adopted a common definition for "family member" that is more inclusive. Everett Community College's definition is as follows:

Family member means the employee's spouse or same or opposite sex domestic partner, child, parent, grandparent, grandchild, sister, or brother. Family member also means individuals in the following relationships with the employee's spouse or domestic partner: child, parent, or grandparent. It also includes those persons in a "step" relationship, adopted or foster child, or a child of a person standing in loco parentis.

Eligibility and Entitlements

Generally, a qualifying leave will be covered by the FMLA if an employee has worked for Everett Community College or the state of Washington at least 60% FTE for at least one year, and has not already used the annual 12 week FMLA leave entitlement.

More specifically, an employee is covered by the FMLA if he or she meets the following eligibility requirements:

- Has completed 12-months of cumulative state service (or 52 weeks if the work is intermittent); and,
- Worked for the state at least 1,250 hours*, including overtime, in the 12 months immediately preceding the date the FMLA leave will begin. (Working for the "state" includes University employment.) Except for military leave, paid and unpaid leave is not counted as part of the 1,250 hours*; and,
- Has not already used the current year's 12 week FMLA leave entitlement.

*Hours worked are not counted for overtime exempt professional staff and for excepted classified staff. These employees are automatically considered to have worked 1250 hours unless the work records clearly reflect otherwise (for example - a 50% FTE employee will normally not have worked 1250 hours in a 12 month period).

Employee Leave Entitlements

The FMLA guarantees that an eligible employee can have job protected time off work as follows:

1. Up to 12 workweeks of job protected time off work per year because of:
 - a. A serious health condition,
 - b. A family member's serious health condition,
 - c. Parental leave to care for a newborn or newly adopted or placed child within the first 12 months from the date of birth, adoption or placement. (NOTE: for birth mothers, any period of pregnancy related temporary disability is not deducted from the 12 week parental leave entitlement).
 - d. Because of any qualifying exigency arising out of the fact that the employee's family member 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.
2. If the employee is an eligible family member or next of kin the employee can have up to 26 workweeks of "Service Member Family Leave" during a single 12-month period to care for a covered service member who is:
 - a. Undergoing medical treatment, recuperation, or therapy,
 - b. Otherwise in outpatient status, or

- c. Otherwise on the temporary disability retired list, for a serious injury or illness.
3. If FMLA covered leave is taken under 1 and 2 above, the combination of leave taken may not exceed 26 workweeks in a 12 single month period. Where medically necessary leave may be taken on an intermittent basis or as a reduced work schedule
4. Husband and Wife: The combined number of workweeks of leave to which both that husband and wife may be entitled under "1d and "2" above may be limited to a combined total of 26 workweeks during the single 12-month period.
5. Employees who work less than full time receive FMLA on a pro rata basis as determined by the employee's status at the time of the request for leave.

Employee Notice and Certification Requirements

Employees are expected to give at least 30 days notice of the need for leave, where the need for leave is foreseeable; or, for leave under 1d above, when the need for is not foreseeable the employee must provide as much notice as is "reasonable and practicable".

Employers may require certification for the reason for taking FMLA covered leave. Contact the Human Resources Department for assistance.

Use of Paid Leave

If the employee has paid leave that the employee is eligible to use, the employee can choose to use it while on FMLA leave. If the employee has compensatory time available, the employee may be allowed to use it.

Appropriate accumulated leave balances shall be used first, after which leave without pay shall be granted. If an employee has accumulated vacation or sick leave balances that can be used for the duration of the twelve (12) week period, additional unpaid Family and Medical Leave will not be granted.

Use of donated shared leave is normally covered by the FMLA, providing the employee meets the Shared Leave eligibility criteria.

Unpaid Leave

Under the FMLA, the employee is guaranteed time away from work. However, if the employee does not have available paid leave, the time off is taken as leave without pay.

Intermittent Leave or Working a Reduced Schedule

The FMLA guarantees an employee the right to take FMLA covered leave intermittently or as part of a reduced work schedule when medically necessary.

For parental leave, the supervisor may require that leave be taken in one continuous period of time away from work. Under state law, a birth mother's period of temporary pregnancy-related disability is not deducted from the 12-week FMLA leave entitlement.

Benefits Entitlements

During a leave covered by the FMLA, Everett Community College pays the employer-paid portion of medical benefits coverage for up to 12 workweeks or up to 26 workweeks for "2" in "Employee Leave Entitlements" above. The employee is responsible for any insurance co-payments, extra premiums to cover family members, life insurance, long term disability insurance, parking fees, or other payroll deductions.

For employees whose leave extends beyond the FMLA-covered period, employer paid medical benefits coverage is continued as long as the employee is in pay status for at least eight (8) hours during each month of leave. Employees,

who do not have appropriate paid leave to use, may self-pay medical premiums in order to continue basic medical benefits coverage.

Return to Work Rights

FMLA entitles an employee to return to the position held prior to the leave or to a position that is virtually identical (i.e. job title, work location, salary, work hours etc.).

Rolling "Twelve-Month" period

The "twelve-month" period used to determine when an employee is entitled to twelve (12) weeks of unpaid Family and Medical Leave will be determined by using a rolling twelve (12) month period measured forward from the date an employee's first Family and Medical Leave begins.

(For example, if an employee took eight (8) weeks of Family and Medical Leave beginning on January 3, 2000, s/he would be eligible for only another four (4) weeks prior to the period ending January 2, 2001. On January 3, 2001, the employee would be eligible for another twelve (12) weeks. If the second occurrence began April 5, 2000, the employee would not be eligible again until April 5, 2001.)

Health Condition Definitions

The United States Department of Labor Family and Medical Leave Act (FMLA) regulations define a "serious health condition" as an illness, injury, impairment, or physical or mental condition that involves one or more of the reasons for absence listed under "Reason for Absence" in the following table.

Reason for Absence	Definition	Examples
Inpatient Care	Any period of incapacity from a condition requiring inpatient care, including recovery from the condition.	<ul style="list-style-type: none"> Hospitalization Post surgery examinations
Incapacity for more than three consecutive days, including work and non-work days that includes:	A condition requiring two or more treatments by a health care provider, or an ongoing regimen or treatment.	Examination to evaluate a condition, plus a course or treatment such as antibiotics or physical therapy.
Conditions that are chronic, long-term, or require multiple treatments	Periodic treatment for a condition that may cause episodic incapacity.	<ul style="list-style-type: none"> Asthma Diabetes
	Incapacity due to a condition which is not curable but which requires medical supervision.	<ul style="list-style-type: none"> Terminal illness Multiple sclerosis
	Absences to receive treatment for a chronic condition.	<ul style="list-style-type: none"> Kidney dialysis
Prenatal treatment and pregnancy	Any period of incapacity due to pregnancy or for prenatal care.	<ul style="list-style-type: none"> Prenatal doctor visits Absences due to morning sickness Post Partum recovery

FMLA Definitions Related to Covered Service Members

Active Duty

Duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) (B) of title 10, United States Code.

Contingency Operation means a military operation that

- is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or
- results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301 (a), 12302, 12304, 12305, or 12406 of Title 10, chapter 15 of Title 10> Subtitle A>Part 1, or any other provision of law during a war or during a national emergency declared by the President or Congress.

Covered Service Member

A current 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

A veteran of the Armed Forces (including the National Guard or Reserves) discharged within the five-year period before the family member first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of a covered service member

GINA Safe Harbor Statement

The Genetic Information Nondiscrimination Act (GINA) of 2008 prohibits employers from requesting or requiring genetic information of employees or their family members. In order to comply with this law, Everett Community College requests that you NOT provide any genetic information when completing FMLA paperwork unless that medical information is directly relevant to and necessary for a complete and sufficient certification under the FMLA. 'Genetic information,' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Outpatient Status

With respect to a covered service member, outpatient status 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.

Next of Kin

Used with respect to an individual, means the nearest blood relative of that individual, or individual designated as next of kin by the covered service member or covered veteran.

Qualifying Exigency Leave

Qualifying Exigency leave entitles eligible employees with a spouse, son, daughter, or parent in the Regular Armed Forces on covered active duty to assist a covered service member in certain activities. These may include making alternative child care arrangements for a child of the deployed military member, attending pre or post deployment military activities, attending counseling, care of the military member's parent, making financial or legal arrangements to address the military member's absence, or time off during the military member's Rest and Recuperation leave.

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 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.

Family Care Act In addition to the Federal Family and Medical Leave Act of 1993, EvCC provides leave in accordance with the State of Washington regulations, any applicable collective bargaining agreement, and EvCC leave policies. Please note: if you are not eligible for FMLA, you may still be eligible for another type of leave under the State of Washington Leave regulations, or within EvCC leave policies or practices.

Family Care Act Health Condition Definitions Nature of Absence	Definition
For A Child: Health Condition Requiring Treatment or Supervision	<ul style="list-style-type: none"> Any medical condition requiring treatment or medication that the child cannot self-administer; Any medical or mental health condition that would endanger the child's safety or recovery without the presence of a parent or guardian; or Any condition warranting treatment or preventive health care such as physical, dental, optical, or immunization services, when a parent must be present to authorize, and when sick leave may otherwise be used for the employee's preventive health care.
Serious Health Condition	<ul style="list-style-type: none"> An illness, injury, impairment, or physical or mental condition that involves 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 or recovery in connection with such inpatient care; Continuing treatment by, or under, the supervision of a health care provider or a provider of health care services, and which includes any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities).
Emergency Condition	A health condition that is a sudden, generally unexpected occurrence, or set of circumstances related to one's health demanding immediate action, and is typically very short-term in nature.
Incapable of Self-care	<p>The individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" or instrumental activities of daily living.</p> <ul style="list-style-type: none"> Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.
Physical or Mental Disability	A physical or mental impairment that limits one or more activities of daily living or instrumental activities of daily living.

RELEVANT LAWS AND OTHER RELATED INFORMATION

[United States Department of Labor](#)

REVISION HISTORY

Original Date: January 1, 2009

Revision Date: November 19, 2013

APPROVED BY

Board of Trustees