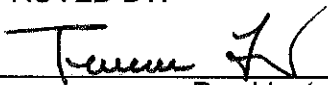


BBCC ADMINISTRATIVE PROCESS

TITLE: Family & Medical Leave	PAGE: 1 OF 6	NUMBER: <u>3005</u>	REVIEWED: REVISED: New
ORIGINATING DEPT: Human Resources	EFFECTIVE DATE:	SUPERSEDES NO. DATE:	
DATE CABINET APPROVAL:	APPROVED BY:  _____ President		

PURPOSE

The Family and Medical Leave Act (FMLA) provides job-protected leave and benefit coverage entitlements to employees who meet eligibility requirements. In addition to the leave provided under the FMLA as outlined below, an employee may also be entitled to other leave under college policies and procedures, applicable negotiated agreements, state and federal laws, statutes and regulations, including WAC's 296-130 (state Family Care) and 357-31 (holidays and leave) and RCW 49.78 (Washington State Family Leave). The following summarizes the provisions of the Family and Medical Leave Act of 1993, as amended.

The VP of Human Resources & Labor or designee is responsible for ensuring leave is administered in good faith and consistent with the rights and responsibilities provided by statute, and for providing information and training specific to these rights and responsibilities.

Supervisors are responsible for managing their staff's leaves and keeping both the employee and the Human Resources Office informed of changes in status, rights, and need for information. Additionally, supervisors are responsible for ensuring that no employee returns to work without first confirming with the Human Resources Office that the appropriate medical release is on file.

Employees are responsible for reporting leaves and providing the notice and information necessary for the college to effectively administer this process and direct its workforce.

Nothing herein modifies the terms of the negotiated agreement.

ELIGIBILITY

An employee is covered by the FMLA if he or she meets the following eligibility requirements:

1. Worked for Big Bend Community College or another Washington state agency or institution of higher education for at least 12 months or 52 weeks (need not be consecutive) prior to the date the leave would begin (periods of service prior to a break in service of seven years or longer will generally not be counted toward the 12 months); and,
2. Has worked for the state at least 1,250 hours, including overtime, in the 12 months immediately preceding the date the FMLA leave would begin. Except for military leave, the 1,250-hour requirement does not count paid time off (i.e., annual leave, sick leave, personal holiday, compensatory time, or shared leave). Union contracts may have different accounting for time requirements; and,
3. Has not already used the current 12-week FMLA leave entitlement.

TYPE OF LEAVE COVERED

Big Bend Community College will grant up to 12 workweeks of job-protected leave in a 12-month period to eligible employees, in accordance with the FMLA and this administrative process, for one or more of the following reasons:

1. Parental leave for the birth and care of a newborn child in the first 12 months after childbirth. **NOTE:** for birth mothers, any period of pregnancy-related, temporary disability is not deducted from the 12-week parental leave entitlement. Classified employees covered by WAC 357 may request parental leave beyond the 12 weeks but not exceeding six months total, including any portion of time covered by the FMLA.
2. The placement of a child with the employee for adoption or foster care within the first 12 months of placement.
3. To care for an employee's spouse, parent or child who has a serious health condition. "To care for" includes both physical and psychological care and arranging third-party care for a family member such as a nursing home or in-home care nursing (required or beneficial determined by a health care provider).
4. Due to the employee's own serious health condition that makes the employee unable to perform the functions of the employee's job.
5. Due to a qualifying exigency arising out of the fact that a spouse, parent or child of an eligible employee is on active duty or has been notified of pending call to active duty in the Armed Forces in support of a contingency operation. Exigency leave applies to family members of active duty service members, Reservists, National Guard, and certain retired members of the Regular Armed Forces and Retired Reserves.
6. To care for an injured or ill covered service member. This leave may extend up to 26 weeks in a 12-month period for an eligible employee whose spouse, parent, child or next-of-kin is injured or recovering from an injury suffered while on active military duty and who is unable to perform the duties of the service member's office, grade, rank or rating. This leave provision also includes veterans who are undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment. During the single 12-month period, an eligible employee is limited to a combined total of 26 weeks of leave for service member caregiver leave and FMLA leave for other qualifying reasons.

EMPLOYEE REQUEST FOR LEAVE AND EMPLOYER DESIGNATION

It is the employee's responsibility to notify the supervisor of the need for leave and to provide reasons for the leave to allow the college to determine if the leave qualifies for FMLA leave. The employee should also provide the anticipated timing and duration of the leave. The supervisor may ask the employee to contact the Human Resources Office for the official FMLA paperwork or may notify the Human Resource Office directly.

The employee needing FMLA leave must follow the regular notification procedures for reporting an absence, absent unusual circumstances. When the leave is foreseeable, such as for planned medical treatment or birth of a child, the request is to be submitted in writing at least 30 calendar days in advance (personnel with teaching responsibilities are encouraged to make their request as far in advance before the start of the quarter as possible). An employee who is to undergo planned medical treatment is required to make a reasonable effort to schedule the treatment in order to minimize disruptions to the college's operations.

FMLA designation is the responsibility of the college. The college will normally determine eligibility and notify the employee of the employee's rights and responsibilities within five business days, absent extenuating circumstances, of the date the college receives knowledge that the leave is being requested for a FMLA qualifying reason. The college may request appropriate certification to support the request for leave, including for military exigency leave. After receipt of complete and sufficient information to allow the college to determine if the leave is FMLA qualifying, the college will notify the employee within five business days, absent extenuating circumstances, that the leave is being designated as FMLA leave.

The college 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.

There may be times when employees are absent under circumstances that would qualify as FMLA leave, and the employee has not specifically applied for FMLA leave time. The college has the right to designate such absences as family and medical leave. If the college fails to designate the leave properly or timely, the leave may still be designated as FMLA leave retroactively unless the employee suffers injury or harm as a result of the retroactive designation, or if the employee and the employer agree.

The college will provide the employee with a FMLA request form to be completed by the employee and a medical certification form to be completed by the employee's or family member's health care provider, or the covered service member's health care provider (see Medical Certification and Documentation requirements below).

The employee requesting military family leave will be provided with certification forms to be completed and a request for a copy of the Active Duty Orders of the military member.

The employee should return these forms within 15 calendar days, absent extenuating circumstances, after the employee receives them.

LEAVE COVERAGE AND AMOUNT

Both Spouses Employed by the College: If a husband and wife both work for the college and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent in-law) with a serious health condition, the husband and wife may only take a combined total of 12 weeks of 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. If a husband and wife both work for the college and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

Accounting for Leave: Use of leave will be accounted for on an hourly basis. For example, a full-time employee scheduled to work 8 hours a day, five days a week, would be entitled to 480 hours of FMLA leave during the 12-month period. For employees who 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.

Calculation of Leave: When calculating when the 12-month period begins and ends, Big Bend Community College uses the rolling 12-month method.

MEDICAL CERTIFICATION AND DOCUMENTATION

Medical certification may be required for any request for use of leave for an employee's own serious health condition, to care for a family member with a serious health condition, or to care for a covered service member with a serious injury or illness. Certification may be required for any request for military exigency leave. The employee will be asked to respond to the request for a complete 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, or the loss of FMLA protection for the leave. Certification should be provided by using the appropriate U.S. Department of Labor certification form listed below. All applicable information should be included.

- FMLA certification for employee (WH-380-E).
- FMLA certification for family member (WH-380-F).
- FMLA certification for military leave (WH-384).
- FMLA certification for covered service member (WH-385).

The FMLA request and medical certification forms are available from the Human Resources Office.

If the college has questions regarding the initial medical certification the college may, with a release from the employee, contact the employee's health care provider to clarify the original certification. The college may also contact the employee's health care provider to authenticate the certification.

If the college has reason to question the medical certification, the college may, at its sole discretion, seek a second opinion from a health care provider of its choosing and expense. If the second opinion conflicts with the first opinion, a third opinion may be obtained at the college's expense from a health care provider mutually chosen by the employee and the college. The third opinion will be controlling. The employee will be considered provisionally entitled to leave pending the second and/or third opinion. If the third opinion determines the medical condition does not qualify under the FMLA, the employee will be required to use paid leave options, if available. If no leave is available the employee may request leave without pay.

The college may require medical certification to be recertified periodically to establish on-going need, re-verify condition, communicate changes in prognosis, or if the college receives information that raises questions about the absence. Re-certifications are provided at the employee's expense.

Due to employee and patient privacy laws, the medical certification and all other related medical information, must be returned directly to and maintained in the Human Resources Office.

INTERMITTENT LEAVE OR A REDUCED SCHEDULE

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 or military family leave.

The college may choose to grant leave on an intermittent or reduced-hour basis for the care of a newborn child or a foster or adopted child. The college and the employee must mutually agree to the work schedule and duration before the employee may take the leave intermittently or work a reduced schedule. Granting of intermittent leave or a reduced schedule for this purpose is discretionary and will be determined on a case-by-case basis.

Intermittent leave arrangements must serve the mutual convenience of the college and the employee. Should such arrangement no longer serve the mutual convenience of either party, it will be terminated and a new leave arrangement may be determined.

The college may temporarily transfer an employee to an available alternate position for which the employee is qualified, with equivalent pay and benefits, if the alternate position would better accommodate the intermittent or reduced schedule. The FMLA does not require an employer to promote or create a position as a form of accommodation.

When taking intermittent leave due to a serious health condition, the employee must either mention the FMLA-qualifying reason or request "FMLA" leave each time leave is taken. Simply "calling in sick" is not sufficient notice of the need for FMLA leave and will not be considered FMLA leave.

The same certification requirements listed previously apply for leave on an intermittent basis or leave on a reduced schedule.

SUBSTITUTION OF PAID LEAVE/CONCURRENT LEAVE

The college will not require an employee to substitute paid leave for otherwise unpaid FMLA leave. Big Bend Community College employees may use any combination of paid or unpaid leave to which they are entitled toward the FMLA entitlement. The use of any leave, paid or unpaid, for a FMLA qualifying event will run concurrently with, and not in addition to, the use of FMLA leave for that event. The types of leave that can be substituted for otherwise unpaid FMLA leave include vacation, sick leave, compensatory time off, shared leave, or personal holiday. Leave under the Washington State Family Care Act runs concurrent to FMLA leave. Leave without pay for an absence covered by worker's compensation will also run concurrently with FMLA leave.

Any employee using paid leave during a FMLA qualifying event must follow the notice and certification requirements relating to FMLA usage in addition to the college's regular notice and approval process related to paid leave. Substitution of sick leave shall only be allowed under situations where sick leave would normally be allowed pursuant to state laws or college policy.

CONTINUATION OF BENEFITS

During approved FMLA leave, an employee's health and other benefits will continue at the same level and under the same conditions as if the employee had continued to work.

During paid leave, the 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 this payment, either in person or by mail. The payment must be received in the Human Resources office by the 10th day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The employer will provide 15 days' notification prior to the employee's loss of coverage.

Employees may choose to waive medical coverage, including supplemental life insurance, optional long-term disability insurance, or contributions to a flexible spending account, during the time they are on FMLA leave. Coverage and deductions will be reinstated once the employee returns to active employment.

If an employee chooses not to return to work at the conclusion of the unpaid FMLA leave for reasons other than a continued serious health condition of the employee or the employee's family member, the continued serious injury or illness of a covered service member, or a circumstance beyond the employee's control, the employee may be required to reimburse the college the amount of health care premiums paid by the college for the employee during the FMLA leave period.

RETURNING TO WORK/FITNESS FOR DUTY

Prior to returning to work from after the employee's own FMLA-qualifying illness, the employee is required to provide a fitness-for-duty certificate from a health care provider. The fitness-for-duty certificate must be job related and consistent with business necessity. A fitness-for-duty certificate will not be required for intermittent leave usage unless there are safety concerns regarding the employee's ability to perform their duties based on the serious health condition. This statement is to be delivered to the Human Resource Office during regular business hours by the employee prior to returning to the workplace. Fitness-for-duty certifications are at the employee's expense.

If the employee's health care provider believes the employee may return to work but with limitations/restrictions, the limitations/restrictions must be noted with expected duration of the restrictions. The VP of Human Resources & Labor will review the information provided and make a determination on the college's ability to accommodate the limitations/restrictions.

JOB RESTORATION

Following the absence granted for an approved FMLA event, an employee will be returned to the same or an equivalent position as the one held immediately prior to the absence unless the employee would have been terminated in the absence of any leave (e.g., layoff, termination of temporary employment). An employee's return may be affected by his or her ability to safely perform the assigned responsibilities. Furthermore, the college may choose to exempt certain "key" employees from this requirement and not return them to the same or similar position.

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.

MISCELLANEOUS

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

CONFIDENTIALITY

All information relating to requests for family and medical leave will be treated in a confidential manner and will be used only to make decisions in regards to the request for FMLA leave. FMLA medical information will be maintained in a confidential file and will not be placed in the employee's personnel file.

COMPLAINTS

Employees are strongly encouraged to bring any concerns regarding FMLA to the attention of the VP of Human Resources & Labor. There will be no retaliation or discrimination against anyone who opposes any practice made unlawful by the FMLA or other law or for involvement in any proceeding related to the FMLA or other law.

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