

FAMILY MEDICAL LEAVE ACT**POLICY**

In accordance with the Family and Medical Leave Act of 1993 (FMLA), Brunswick Community College has adopted a policy with respect to the types of family and medical leave described below. Detailed information about FMLA may be found at: <https://www.dol.gov/whd/fmla/>.

PROCEDURES**Employee Eligibility**

The Family and Medical Leave Act (FMLA) allows employees to take up to 12 weeks of leave in a twelve month period for family and medical needs. To be eligible for FMLA leave, an employee must have worked for the College:

- for a total of 12 months; and
- for at least 1,250 hours during the 12 months immediately prior to the start of the FMLA leave

While the 12 months of employment need not be consecutive, employment periods prior to a break in service of seven years or more need not be counted unless the break is occasioned by the employee's fulfillment of his or her National Guard or Reserve military obligation, or other special circumstances apply.

Leave Entitlement

Eligible employees are allowed to take up to 12 work weeks of leave within a 12-month period, measured forward from the first day FMLA leave is taken.

Leave will be granted for one or more of the following reasons:

- The birth and care of an employee's child
- The placement of a child with the employee for adoption or foster care, and the care of the child;
- The care of an immediate family member - spouse, child, or parent (not extending to "in-laws")- with a serious health condition;
- A serious health condition causing an employee to be unable to perform his or her job;
- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty or call to covered active duty status

“Active Duty” means (1) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces in a foreign country; and (2) for service members of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call, or order to active duty status.

Intermittent/Reduced Schedule Leave: The FMLA also permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances. Intermittent and/or reduced schedule leave may not be taken for the birth or placement of a child for adoption.

Leave taken because of the birth of a child or to care for a newborn child or child placed in the employee's home by adoption or foster care must be taken within the 12-month period immediately following the child's birth or placement.

Employees should contact the Office of Human Resources for questions about individual cases.

Active Duty Family Medical Leave

Eligible employees are allowed to take up to 12 work weeks of leave within a 12-month period for any "qualifying exigency" arising from the fact that an employee's spouse, child, or parent is on or has been called to Active Duty.

A qualifying exigency may include:

- Short-notice deployment, defined as a call/order to active duty seven days prior to the date of deployment
- Military events and related activities
- Childcare and school activities (for example: making childcare arrangements, enrolling a child in school, etc.)
- Financial and legal arrangements (for example: executing Power of Attorney, preparing or updating a will or living trust, transferring signature authority for bank accounts, obtaining military identification cards, etc.)
- Counseling
- Rest and recuperation time with a service member on short-term leave (limited to five days per leave)
- Post-deployment activities (within 90 days following termination of active duty status), such as attending ceremonies, addressing issues arising from the death of a service member, etc.
- Additional activities as agreed upon by both employer and employee

Covered Service Member Family Leave

Eligible employees are entitled to take up to 26 work weeks of leave within a 12-month period to care for a covered service member who is the employee's spouse, parent (excluding in-laws), or child (a son or daughter who is 18 years of age or older), or for whom the employee is "next of kin." However, during the single 12-month period in which Service member Family Leave may be taken, eligible employees are limited to a combined total of 26 weeks of unpaid leave for any reason under the FMLA; however, no more than 12 of those weeks may be taken for non-Service member Family Leave.

A covered service member is defined as a current member or veteran of the Armed Forces, National Guard, or Reserves, whether on active duty or on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty (or if the injury or illness existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy, or is in an outpatient status, or is on the temporary disability retired list.

A covered veteran is a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

A serious injury or illness for a covered veteran means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

Certification for Military Leave

An employee requesting Active Duty Family Leave or Covered Service member Family Leave must complete Form WH-385: Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave or Form WH-384: Certification for Qualifying Exigency for Military Family Leave. Both forms are available in the Human Resources Office.

Substitution of Paid Leave

Any paid leave benefits (vacation, sick leave, workers' compensation leave, or disability benefits) the employee is eligible to use and elects to use will run concurrently with FMLA leave.

Medical Certification

An employee requesting leave for the employee's medical condition or due to the medical condition of the employee's spouse, parent or child must present a certification from a health care provider of the condition, illness, or circumstance for which the leave is requested. A form for the certification is available in Human Resources (Form WH 380-E: Certification of Health Care Provider for Employee's Serious Health Condition and Form WH 380-F: Certification of Health Care Provider for Family Member's Serious Health Condition). Forms must be completed and returned to Human Resources within 15 calendar days.

Employees who take FMLA leave for their own serious health condition must submit to a Fitness-for-Duty certification prior to returning to work. Otherwise, the employee may not be permitted to return to work until he or she submits the required certification. Failure to provide a fitness for duty certification after the end of a FMLA leave for the employee's own serious health condition

may result in the employee being discharged. The fitness for duty paperwork must list any limitations upon the employee's ability to return to work, as well as the anticipated duration of such limitations.

Note: Any intentional misrepresentation to obtain or continue a leave of absence will result in immediate discipline, up to and including discharge.

Continuation of Health Benefits

The College will maintain health insurance coverage for an employee taking FMLA leave for the duration of the leave time, under the appropriate health plan and at the level that would have been provided if the employee had not taken leave. Under certain conditions, the College may recover the premiums if an employee fails to return after the allowed period of leave time.

Job Restoration

Upon returning from FMLA leave, an employee must be restored to his or her original position or to an equivalent position in terms of pay, benefits, and other employment terms and conditions; and without loss of any benefits accrued at the time the leave began. All benefits accrue during any period of paid leave, but do not accrue during any period of leave without pay.

Employee Responsibilities

Employees are required to give notice of the need for FMLA leave, just as they are for vacation and sick leave, and to comply with rules pertaining to requests for leave:

- 30 days' advance notice when the need is foreseeable.
- When the need is not foreseeable, notice "as soon as practicable" (generally, at least verbal notice to the immediate supervisor within one or two business days of learning of the need for leave time)

Medical certification must be provided within 30 calendar days using one of the following forms:

- Form WH-380E for employees seeking leave for their own serious health condition
- Form WH-380F for employees seeking leave to care for a family member
- Form WH-385 for employees seeking leave for injured service members
- Form WH-384 for employees seeking leave due to a qualifying exigency

Notice of Eligibility

The College will inform the employee requesting FMLA leave whether the employee is eligible under the FMLA. If the employee is eligible, the notice to the employee will specify additional employee rights and responsibilities. In addition, the College will inform the employee if the leave will be designed as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employee is not eligible, the College will notify the employee that the leave is not FMLA-protected and provide a reason for the ineligibility.

Recertification

The employee must notify the College every 30 days of his/her status and intent to return to work. Employees on leave longer than 30 days may be required to recertify their serious health condition or the serious health condition of a family member by submitting another completed medical certification form, unless a minimum duration of incapacity has been specified in the certification, in which case recertification generally will not be required until the duration specified has passed. Unless special circumstances apply which permit an earlier recertification, the College will require a recertification of an ongoing condition every six months in conjunction with an absence. Failure to recertify a serious health condition when requested by submitting a completed medical certification form within 15 calendar days will result in the leave losing its FMLA protection.

Miscellaneous FMLA Information

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 under or related to the FMLA. An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer. The FMLA does not affect any federal or state leave prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

Approved by the Brunswick Community College Board of Trustees

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