

## **FAMILY AND MEDICAL LEAVE ACT**

FMLA requires the college to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees may also be eligible because of a qualifying exigency arising out of the fact that the spouse, son, daughter, parent, or next of kin of the employee is on covered active duty or has been notified of an impending call or order to covered active duty. Employees are eligible if they have worked for the college at least 12 months and for 1,250 hours over the previous 12 months. The USERRA-protections for employees who miss work due to USERRA-covered military service extend to all military members. All periods of absence from work due to or necessitated by USERRA-covered service is counted in determining an employee's eligibility for FMLA leave.

**BASIC REASONS FOR TAKING LEAVE:** Unpaid leave must be granted for any of the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth.
- To care for your child after birth, or placement for adoption or foster care.
- To care for your spouse, son, daughter or parent, who has a serious health condition\*.
- For a serious health condition\* that makes you unable to perform your job.

\*Definition of a serious health condition: A serious health condition is an illness, injury or impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with a least two visits to a health care provider or one visit to a regimen of continuing treatment, or capacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

### **MILITARY FAMILY LEAVE ENTITLEMENTS:**

Families of members of the National Guard and Reserves are eligible for the normal 12 workweeks of FMLA leave while that family member is on \*\*covered active duty or called to active duty status in support of a contingency operation. This leave may be used for "any qualifying exigency" arising out of the fact that the family member is on active duty or has been called to active duty, including: (1) short-notice deployment; (2) military events and related activities; (3) childcare and school activities; (4) financial and legal arrangements; (5) counseling; (6) rest and recuperation; (7) post-deployment activities; (8) to care for a military member's parent who is incapable of self-care and (9) additional activities not encompassed in the other categories, but agreed to by the employer and employee.

Special Leave entitlement: Employees who qualify under this FMLA provision are eligible to receive up to 26 weeks of unpaid FMLA leave to care for a covered servicemember. A covered

servicemember is: (1) 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 (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

\*\*The FMLA definition for “covered active duty” requires that the deployment must be to a foreign country to qualify for FMLA leave.

\*\*\*The FMLA definitions of “serious injury or illness” for current servicemembers and veterans are distinct from the FMLA definition of “serious health condition.” The definition of serious injury or illness for a current servicemember and covered veterans includes injuries or illnesses incurred by a covered servicemember in the line of duty and injuries or illnesses that existed before the beginning of the member’s active duty and were aggravated by service in the line of duty on active duty in the Armed Forces.

### State Family Military Leave

Spouses or parents of persons called to military service lasting 179 days or longer are also entitled to take an unpaid leave of absence under Nebraska law. If a family member of a service member is eligible for leave under both the federal FMLA and the Nebraska family military leave law, the leave will be deemed to run concurrently (counted toward the employee’s entitlement under both laws).

### Military Leave Questions

Employees who wish to take family military leave should consult with Human Resources concerning their eligibility for and use of such leave.

Accrued paid sick and vacation leave will be substituted for unpaid leave first, but will run concurrently with the 12 weeks of unpaid leave available under the act. Once the paid leave is exhausted, unpaid leave will be used and run for the remainder of the leave time available under the act. The FMLA year runs on a “rolling calendar” year.

### **USE OF LEAVE:**

Leave can be taken in one block of time, can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer’s operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

**ADVANCE NOTICE AND MEDICAL CERTIFICATION:** You may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- You ordinarily must provide 30 days advance notice when the leave is "foreseeable." When this is not possible, your obligation is to provide as early of notice as is practical.
- The college may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at college expense) and a fitness for duty report to return to work.
- Upon notice of a request for leave and determination of the employee's eligibility for FMLA leave, the human resources director will notify the employee of the eligibility determination. For eligible employees, the notice will include the date the leave begins, the maximum amount of FMLA leave available, any requirements to provide medical certifications, and other information as required by law.
- For covered active duty leaves, you must provide a copy of the military orders once they have been received, your obligation is to provide as early of notice as is practical.
- For covered active duty leaves for Rest and Recuperation (up to 15 days), you must provide a copy of the military member's Rest and Recuperation leave orders, or other military-issued documentation.

**JOB BENEFITS AND PROTECTION:**

- a) For the duration of FMLA leave, the college must maintain your health coverage under any "group health plan". The college and the employee continue to pay their respective portions of the premium during FMLA leave.
- b) Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- c) The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of your leave.