

## **410-10 FAMILY MEDICAL LEAVE ACT (FMLA) —PROCEDURAL GUIDELINES**

### **1. PURPOSE**

The purpose of the Family Medical Leave Act (FMLA) is to allow eligible employees to take leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, domestic partner, or parent who has a serious health condition. The FMLA provides job protection during the leave period.

### **2. PROCEDURE**

#### **1. Eligibility**

Eligible employees are those who meet the following requirements:

- a. An employee who has been employed for at least 12 continuous months by the College; and
- b. An employee who has been employed for at least 1,250 hours of service with the College during the previous 12 month period.

#### **2. Military Related FMLA Leave**

- a. Active Duty Leave: Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use the leave entitlement to address certain qualifying exigencies to manage their affairs, which is referred to herein as “qualifying exigencies.” Qualifying exigencies include (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; and (8) additional activities where you and CCC agree to leave. The length of the leave due to any of the qualifying exigencies will be determined by the applicable regulations and on a case-by-case basis.
- b. Caregiver Leave: Eligible employees who are the spouse, son, daughter, parent or next of kin may take up to 26 weeks (1,040 hours) of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

#### **3. Scope of Benefit**

An eligible employee may request a total of 12 work weeks (480 hours) of leave during a year. The College defines a year to be a rolling-year. That is, the 12-month period is measured backward from the date an employee uses any FMLA leave. Thus, each time an employee takes FMLA leave, the remaining leave entitlement could be any balance of the twelve weeks not used during the immediately preceding 12 months.

FMLA may be used for one or more of the following reasons:

- a. The birth or adoption of a child of the employee.
- b. The placement of a child with the employee for adoption or foster care.
- c. To care for the spouse, or domestic partner, or child, or parent of an employee if such spouse, domestic partner, child, or parent has a serious health condition.
- d. A serious health condition makes the employee unable to perform the functions of the position of such employee.

A serious health condition is defined as illness, injury, impairment, or physical or mental condition that involves (a) Inpatient care in a hospital, hospice or residential medical care facility, (b) Continuing treatment by a health care provider, (c) Must involve more than three (3) consecutive calendar days of incapacity plus two (2) visits to a health care provider and that those two visits must occur within thirty (30) days of the period of incapacity.

The entitlement to leave for the birth or placement of a child shall expire at the end of a 12-month period beginning on the date of such birth or placement.

4. Employment of Both Spouses and Domestic Partners

In the case which spouses or domestic partners are both employed by the College and are entitled to leave under this policy the total amount of work weeks of leave to which both may be entitled will be limited to twelve (12) weeks (480 hours) of leave in the aggregate for the birth or care of a newborn, for the adoption or foster care placement of a child, or for the care of a parent (but not parent in-law).

5. Intermittent Period of Leave

Leave taken for a serious health condition of the employee or for that of a spouse or domestic partner, child, or parent may be taken intermittently or on a reduced leave schedule when medically necessary. The taking of leave intermittently or on a reduced leave schedule shall not result in a reduction in the total amount of leave to which the employee is entitled. The employee shall meet with their supervisor and attempt to work out a schedule which meets the employee's needs without unduly disrupting the College's operations, subject to the approval of the health care provider. A pregnant employee may take intermittent leave for severe morning sickness.

If an employee requests intermittent leave, or leave on a reduced leave schedule that is foreseeable based on planned medical treatment, the College may require such employee to transfer temporarily to an available alternative position offered by the College for which the employee is qualified, which has equivalent pay and benefits, and which better accommodates recurring periods of leave than the employee's regular position.

Leave taken for the birth of a child, care for the newborn, adoption, or the adoption or placement of a child for foster care with the employee must be taken

inconsecutive workweeks and completed within the twelve month period following the birth or placement of the child with the employee.

6. Pay Status

The employee must concurrently use any accrued paid leave such as sick, PTO, or other leave for any part of the twelve-week FMLA leave.

The employee will be on leave without pay if accrued leave balances are depleted.

7. Request for Leave

Requests for Family Leave must be made in writing using a Leave Request form which shall be given to the supervisor for review at least thirty (30) days in advance of the need for leave for birth, adoption, or planned medical treatment when the need for such leave is foreseeable. The leave request and accompanying statements will then be forwarded to the Human Resources Department for approval. If an employee fails to give thirty (30) days' notice for foreseeable leave with no reasonable excuse for the delay, the College may delay the taking of FMLA leave until at least thirty (30) days after the date the employee provides notice to the College for FMLA leave.

The 30-day advance request is not required in cases of medical emergency or other unforeseen events. To avoid disrupting the operation of the College, the employee shall provide as much notice as soon as possible under the facts and circumstances in the individual case.

Failure to follow internal employer procedures will not permit the College to disallow an employee's taking of FMLA leave if the employee gives timely verbal or other notice.

8. Medical Certification Requirements

All Family Leave requests, except requests for leave for the birth or adoption of a child, must be accompanied by the College's "Request for Family Medical Leave" form completed by a physician.

Anytime an employee requesting FMLA leave expects to be or is absent as a result of his/her own serious health condition, the employee will be required to submit medical certification at the time the employee gives notice for leave or within two (2) business days thereafter or in the case of unforeseen leave, within two (2) business days after the leave commences. Human Resources (not the immediate supervisor) may contact the employee's health care provider to seek clarification about the information on the employee's FMLA certification form or if the employer later has reason to question the appropriateness of the leave or its duration.

In any case in which the College has reason to doubt the validity of the statement provided by the physician, the College may require, at the expense of the College,

that the eligible employee obtain a second opinion from a physician not employed on a regular basis by the College and designated or approved by the College.

Resolution of conflicting opinions resulting from a second opinion shall be vested in a third opinion, at the expense of the College, of a health care provider designated or approved jointly by the College and the employee.

If the certification does not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the College's leave policies.

The College will advise an employee of an incomplete certification and allow the employee a reasonable opportunity to cure any such deficiency.

9. Return to Work

The College requires an employee on FMLA to report periodically, as agreed upon between the employee, the direct supervisor and the Human Resources Department, on the status and intent to return to work. Any eligible employee who takes FMLA leave under this policy will be reinstated under the following conditions:

- a. To be restored to his/her former position; or
- b. To be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

For leave taken for an employee's own health condition, prior to return from FMLA leave the College requires the employee to receive certification from a physician certifying the employee is able to return to work and perform all the essential functions of the position with or without a reasonable accommodation.

The taking of FMLA leave shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. If you are determined to be a "key employee," reference federal regulation 825.218 Substantial and grievous economic injury.

10. Return to Work Limitations

Nothing in this policy shall be construed to entitle any reinstated employee to any refund of retirement contribution, since the return of the employee is anticipated. Retirement service credits do not accrue during any period of unpaid leave, but will commence upon the employee's return to work.

No employee has greater right to reinstatement or to other benefits and conditions of employment than if the employee has been continuously employed during the FMLA leave period. Thus, for example, if a staff reduction or some extenuating circumstance or business condition arises that affects the employee's position, reinstatement may not be possible.

Employees performing “modified duty” work does not count toward the 12 weeks (480 hours) of FMLA.

11. Effect on Benefits

The College shall maintain the employee’s full coverage for health, basic life, vision and dental insurance at the level and under the conditions coverage would have been provided if the employee had been employed continuously for the duration of such leave. Normal employee contributions to health, vision and dental benefits will be deducted from any payments made to the employee while on leave.

12. Failure to Return to Work

An employee will be considered to have voluntarily terminated employment if the employee:

- a. Fails to return to work upon expiration of the period of leave to which the employee is entitled and has not verbally or submitted a written request under the Extended Personal Leave Procedure.
- b. Advises the College of his/her intention not to return to work;
- c. Refuses comparable re-employment.

If an employee fails to return to work after the employee’s FMLA unpaid leave entitlement has been exhausted or expires, the employee shall repay the College the full health insurance premium paid by the College on behalf of the employee during the period of the FMLA unpaid leave.

13. Americans with Disabilities Act

Nothing in this procedure shall negate the College’s obligations under the Americans with Disabilities Act (ADA).

**3. BACKGROUND**

1. References: Americans with Disabilities Act (ADA), DOL Revision dated 1/16/09
2. Revision history: 11/29/2010, 8/11/2016
3. Legal review: none
4. Sponsor: Human Resources

Guidelines effective: 08/11/2016

**COCONINO COMMUNITY COLLEGE**