Purpose

Delaware County Community College understands the importance of family issues to today’s workforce and recognizes that its employees often face conflicting demands of family obligations and work requirements. Because employees may find it necessary to take leave from their jobs for a temporary period to address certain family responsibilities or their own serious medical health conditions, and in order to comply with the Family and Medical Leave Act of 1993 (FMLA), the College has established the following policy governing parental, family, and medical leaves.

A notice entitled “Employee Rights and Responsibilities under the Family and Medical Leave Act” [http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf](http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf) is available on HR/Payroll tab on delagATE and is posted on the Human Resources bulletin board.

Eligibility

An employee is eligible if he/she has been employed by the College for at least 12 months and has worked at least 1,250 hours during the 12-month period prior to the time leave would begin under this policy. Hours are calculated based upon actual hours worked, including overtime.

Note: Employees eligible for FMLA leave must be eligible for the College’s benefit programs in order to be entitled to any paid leave referenced in this policy. Otherwise, the entire leave will be unpaid.

Qualifying Reasons

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

1. For incapacity due to pregnancy, prenatal medical care or child birth;
2. To care for the employee’s child after birth, or placement for adoption, or foster care;
3. To care for the employee’s spouse, son, daughter or parent, who has a serious health condition; or
4. For a serious health condition that makes the employee unable to perform the employee’s job.
Military Family Leave Entitlement

Eligible employees whose spouse, son, daughter, or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service member during a single 12-month period. A covered service member 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 a 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.

Definitions

A “serious health condition” is an illness, injury, impairment, or physical or mental condition that causes a period of incapacity resulting in:

1. The need for inpatient care in a hospital, hospice, or medical care facility, and any subsequent treatment in connection with such inpatient care.
2. Absence from work, school, or other regular activities for more than three (3) consecutive, full calendar days and requiring treatment by a healthcare provider at least once within seven days of the first day of incapacity and (i) requires either a regimen of continuing treatment or (ii) a serious in-person visit to the health care provider for treatment or (iii) a second in-person visit to the health care provider for treatment (the necessity of which is determined by the healthcare provider) within the 30 days of the first day of incapacity.
3. The need for continuing treatment or supervision by a healthcare provider for a condition so serious that, if not treated, would likely result in a period of incapacity for more than three (3) calendar days and requires visits for treatment by a healthcare provider at least twice a year; or
4. The need for continuing treatment of supervision by a healthcare provider for prenatal care. The employee husband of a pregnant spouse is entitled to FMLA leave for prenatal care.

A “qualifying exigency” is defined as: short notice deployment, attending military events and activities, arranging for alternative childcare or school activities, addressing financial and legal arrangements, attending counseling, rest and recuperation, attending post-deployment activities
within 90 days following the termination of the covered military member’s active duty or call to active duty (provided that the employer and employee agree that such leave shall qualify as exigency, and agree to both the timing and duration of the leave).

“Son or daughter” means a biological or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under the age of eighteen (18) or age 18 or older and incapable of self-care because of a mental or physical disability.

“Family member” includes children, spouse, parents, but not son-in law, daughter-in-law or parents-in law.

“In loco parentis” means those persons with day-to-day responsibilities to care for and financially support a child, or in the case of an employee, who had such responsibility for the employee when the employee was a child.

“Spouse” – The U.S. Department of Labor’s Wage and Hour Division announced a Final Rule effective March 27, 2015 to revise the definition of spouse under the Family and Medical Leave Act of 1993 (FMLA) in light of the United States Supreme Court’s decision in the United States v. Windsor, which found section 3 of the Defense of Marriage Act (DOMA) to be unconstitutional. The Final Rule amends the definition of spouse so that eligible employees in legal same-sex marriages will be able to take FMLA leave to care for their spouse or family member, regardless of where they live. www.dol.gov/whd/fmla/spouse/

“Parent” means a biological parent or an individual who stands in loco parentis to an employee when the employee was a son or daughter.

“Health Care Provider” means:

A. Doctors of medicine or osteopathy authorized to practice medicine or surgery in the state in which the doctors practice; or
B. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray or equivalent to exist) authorized to practice, and performing within the scope of their practice, under state law; or
C. Nurse practitioner, nurse midwives and clinical social workers authorized to practice, and performing within the scope of their practices, as defined under state law; or
D. Any health care provider recognized by the employer or the employer’s group health plan.

“Key Employee” means a salaried employee who is among the highest paid ten percent of employees within 75 miles of the worksite.
Leave Coverage and 12-Month Period

A. Measuring the 12-Month Period – An eligible employee can take up to 12 weeks of FMLA leave during a 12-month period. Delaware County Community College will measure the 12-month period forward from the date the employee’s first FMLA leave begins. The employee’s next leave year would begin the first time FMLA leave is taken after completion of the previous 12-month period. For example, an eligible employee began FMLA leave on November 1, 2012. The employee would have been entitled to use 12 weeks of FMLA leave between November 1, 2012 and October 31, 2013. If that employee used 12 weeks between November 1, 2012 and February 1, 2013, they would not be eligible again for FMLA leave until November 1, 2013. If they next use FMLA leave beginning April 1, 2014, their next 12-month period would run from April 1, 2014 through March 31, 2015.

B. Accounting for Leave – Use of leave will normally be accounted for on an hourly basis. A full-time employee would thus be entitled to 480 hours of FMLA leave during the 12-month period.

Employee Request for Leave Procedures and Employer Designation

Family Medical Leave Act leave designation is the responsibility of Delaware County Community College. The College will determine FMLA eligibility and notify the employee that the leave will be designated as FMLA leave in accordance with the FMLA. The designation may be made either interpersonally, orally, or in writing. If given interpersonally or orally, it will be followed up in writing.

The employee will provide the College with not less than thirty (30) days’ notice before the FMLA leave is to begin. If the need for the leave is unforeseeable 30 days in advance, then the employee will provide such notice when feasible. It is the employee’s responsibility to notify their supervisor of the need for leave, providing the anticipated timing and duration of the leave, and to complete and submit the appropriate forms or paperwork. It is also the employee’s responsibility to provide reasons for the leave to the employer to allow the employer to determine if the leave qualifies for FMLA leave.

The Vice President of Human Resources or designee may inquire further regarding the need for leave if the employee does not initially provide adequate information to determine if the leave requests qualifies for FMLA leave designation.

The Vice President of Human Resources or designee will provide the employee with FMLA leave information and request forms to be completed by the employee and/or family member’s health care provider. The employee should return the FMLA leave forms within 15 calendar days after the employee receives them. Information and FMLA leave forms will also be available through the Human Resources office and the College’s web site.
Intermittent Leave

Intermittent leave or leave on a reduced schedule will be granted if medically necessary of an eligible employee’s own serious health condition, or to care for a family member with a serious health condition. Medical certification or documentation of the need for the leave on an intermittent basis or leave on a reduced schedule will be required.

Employees needing intermittent leave or leave on a reduced schedule for foreseeable medical treatment must work with their supervisor to schedule the leave, subject to the approval of the health care provider, so as not to unduly disrupt the unit’s work of the College’s operation.

The College may choose to grant leave on an intermittent basis for the care of a newborn child or a foster or adopted child. Granting of intermittent leave for this purpose is discretionary and will be determined on a case-by-case basis. If such leave is granted, the employee and the College must mutually agree to the schedule to be worked before the employee may take the intermittent FMLA leave.

Delaware County Community College may temporarily transfer an employee using intermittent leave to an alternate position for which the employee is qualified, with equivalent pay and benefits if the alternate position would better accommodate the intermittent schedule.

Substitution of Paid Leave

Delaware County Community College may require an employee to exhaust all paid leave prior to using any leave without pay.

The use of any paid or unpaid leave (excluding leave for a compensable work-related illness or injury) for a FMLA qualifying event will run concurrently with, and not in addition to, the use of FMLA for that event. Employees will not be required to exhaust all paid leave prior to using any leave without pay for a compensable work-related illness or injury.

Medical Certification

Medical certification will be required for any request for the use of leave for an employee’s own serious health condition or to take care of a family member with a serious health condition. It is the employee’s responsibility to provide complete medical 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. Certification should be provided by using the Medical Certification Form which is available from the Human Resources office or through the College’s web site.

If the College has reason to question the medical certification, they may elect to seek a second opinion from a health care provider of their choosing at the College’s 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.

Delaware County Community College may ask for recertification under the provisions of the FMLA. Re-certifications are provided at the employee’s expense.

**Continuation of Benefits**

During an approved FMLA leave, the College will continue an eligible employee’s health and other benefits at the same level and under the same conditions as if the employee had continued to work. The eligible employee will be required to pay their portion of their health care and other benefit premiums during their FMLA leave absence.

During the 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 these payments.

If the employee on unpaid leave does not pay their share of premiums, the College may elect to discontinue coverage until payment of the employee’s portion of the premium has been made.

**Returning to Work**

Upon returning to work after the employee’s own FMLA leave qualifying illness, the employee will be required to provide a fitness for duty certification from the employee’s health care provider. The fitness for duty certificate should be job related and consistent with business necessity. A fitness for duty certificate may or may not be required for intermittent FMLA leave, determined by Human Resources on a case-by-case basis.

Following absences granted for an approved FMLA event, an employee shall be returned to the same or an equivalent position as the one held immediately prior to the absence, except, under specific and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, the employer may refuse to reinstate certain highly paid “key employees” after using FMLA leave during which health coverage was maintained. If such a circumstance were to occur, the College will:

- A. Notify the employee of their status as a “key” employee in response to the employee’s notice of intent to take FMLA leave;
- B. Notify the employee as soon as the employer decided it will deny job restoration, and explain the reasons for this decision;
- C. Offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; and
- D. Make a final determination as to whether reinstatement will be denied as the end of the leave period if the employee then requests restoration.