



## **NO. 2210      FAMILY AND MEDICAL LEAVE ACT LEAVE**

### **1.0      FAMILY AND MEDICAL LEAVE ACT LEAVE**

Oklahoma City Community College ("OCCC") provides Eligible Employees with job-protected leave as required by the Family Medical Leave Act ("FMLA Leave"). An Eligible Employee is entitled to up to 12 work weeks of FMLA Leave during any rolling 12-month period for certain Qualifying Reasons when documented as required below. An Eligible Employee may be entitled to up to 26 weeks in a single 12-month period for Military Caregiver Leave to care for a covered servicemember with a serious illness or injury. Time off for FMLA Leave may be paid or unpaid as provided below.

### **2.0      DEFINITIONS**

- 2.1 Covered Servicemember: For purposes of Military Caregiver Leave, "Covered Servicemember" means:
  - 2.1.1 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
  - 2.1.2 a veteran who is undergoing medical treatment, recuperation, or therapy for a serious illness or injury, was a member of the Armed forces (including the National Guard or Reserves) and 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.
- 2.2 Eligible Employee: For purposes of this policy, "Eligible Employee" means any employee of OCCC who:
  - 2.2.1 has at least 12 months of cumulative service with OCCC (the 12 months need not be consecutive but certain breaks in service restrictions apply); and
  - 2.2.2 has worked at least 1,250 hours at OCCC during the twelve (12) month period immediately preceding the date of the FMLA Leave.
- 2.3 Military Caregiver Leave: Eligible Employees may take up to 26 weeks of leave to care for a spouse, son, daughter, parent or next of kin who is a Covered Servicemember with a serious injury or illness that was incurred in or aggravated by service in the line of duty on active duty and that meets the requirements of Department of Labor regulations.
- 2.4 Qualifying Exigency Leave: Leave of up to 12 weeks in any rolling 12-month period for an Eligible Employee with a spouse, son, daughter or parent on covered active duty or call to covered active duty status in the Armed Forces, including the National Guard or Reserves, in a foreign country to address certain qualifying exigencies. Qualifying exigencies may include short notice deployment, attending certain military events and related activities, arranging for alternative childcare or parental care or attending school activities, addressing

certain financial and legal arrangements, counseling sessions, and attending post-deployment reintegration briefings. State calls to active duty do not qualify unless under certain orders of the President of the United States.

2.5 Qualifying Reason: Qualifying Reasons for FMLA Leave are:

- 2.5.1 On the birth of and to care for the newborn child of an Eligible Employee, if FMLA Leave is taken within the first twelve months after the child's birth;
- 2.5.2 On the placement of a child with an Eligible Employee through adoption or foster care, if FMLA Leave is taken within the first twelve months after the placement;
- 2.5.3 To care for an Eligible Employee's parent, spouse, son or daughter with a Serious Health Condition;
- 2.5.4 When the Eligible Employee is unable to work due to his or her own Serious Health Condition, disability or work-related injury;
- 2.5.5 Because of a qualifying exigency under the Qualifying Exigency Leave provisions described in paragraph 2.4 above; and
- 2.5.6 To care for a Covered Servicemember with a Serious Illness or Injury under the Military Caregiver Leave provisions described in paragraph 2.3 above.

2.6 Serious Health Condition: A "Serious Health Condition" means an injury, illness, impairment or physical or mental condition involving 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, work or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of three (3) consecutive calendar days combined with at least two (2) visits to a healthcare provider, or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic, long-term or permanent condition.

2.7 Serious Illness or Injury: For purposes of Military Caregiver Leave, "Serious Illness or Injury" is as defined in 29 CFR § 825.127(c). "Serious Illness or Injury" is not defined in the same way as "Serious Health Condition."

2.8 Spouse: For purposes of FMLA, a Spouse is defined as a Regular Full-time Employee's current legal spouse.

3.0 LEAVE ENTITLEMENT

3.1 Eligible Employees may take up to 12 work weeks of FMLA Leave during any rolling 12-month period ending on the date the requested FMLA Leave begins.

3.1.1 The 12 weeks of FMLA Leave are subject to the following restrictions:

3.1.1.1 FMLA leave for the birth of a child or placement of a child with the employee by adoption or foster care must conclude within 12 months of the birth or placement of the child. Eligible Employee spouses who are both employed by OCCC are each entitled to leave of up to 12 work weeks in a 12 month period for the birth of a child or placement of a child with the employee by adoption or foster care.

- 3.1.1.2 Spouses who are both employed by OCCC may each take up to 12 work weeks of leave to care for a parent, spouse, son or daughter with a Serious Health Condition.
    - 3.1.1.3 If FMLA Leave is taken to care for a child after the birth or placement with the employee by foster care or adoption, leave may not be taken intermittently or on a reduced work schedule. However, as an exception, intermittent or reduced schedule leave may be permitted where the Vice President for Human Resources determines that leave on an intermittent or reduced schedule basis is in the best interests of OCCC.
  - 3.2 An Eligible Employee who is the spouse, son, daughter, parent or next of kin of a Covered Servicemember may take up to 26 work weeks of Military Caregiver Leave during a single 12-month period.
    - 3.2.1 The 26 weeks of Military Caregiver Leave is on a per servicemember, per injury basis.
      - 3.2.1.1 An Eligible Employee may take a total of 26 weeks leave for an injury.
      - 3.2.1.2 An Eligible Employee may not take more than 26 weeks in any single 12-month period.
      - 3.2.1.3 Where leave meets both the definition of Military Caregiver Leave and leave to care for a family member with a serious health condition, the leave must be designated as Military Caregiver Leave.
  - 3.3 FMLA leave for an employee's own or a family member's serious health condition, for Qualifying Exigency or Military Caregiver Leave may be taken in a single block, 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 OCCC's operations. Qualifying Exigency leave may also be taken on an intermittent basis. Leave for the birth or placement of a child may not be taken on an intermittent or reduced leave basis except as provided in 3.1.1.3 above.
- 4.0 NOTICE AND CERTIFICATION
  - 4.1 Employee Notice: Employees desiring to take FMLA Leave must provide OCCC with at least 30 days' notice of the need for leave, if the need for leave is foreseeable. If the need for leave is not foreseeable, the employee must give as much notice as is practicable.
    - 4.1.1 Employees requesting FMLA Leave must complete the Request for FMLA Leave form available from Human Resources.
    - 4.1.2 When the need for leave is for planned medical treatment of a Serious Health Condition of an Eligible Employee or the Eligible Employee's spouse, parent, son or daughter, the employee must make a reasonable effort to schedule the treatment in a manner to minimize disruptions to the employee's department and OCCC.
    - 4.1.3 Eligible Employees who request FMLA Leave for a Serious Health Condition of the Eligible Employee or the Eligible Employee's spouse, parent, son or daughter must provide medical certification from a health

care provider. OCCC may require a second and a third opinion (at OCCC's expense), periodic recertification of the Serious Health Condition and, when the leave is due to the employee's own Serious Health Condition, a fitness for duty statement before the employee returns to work. Where FMLA Leave is requested due to the Serious Health Condition of a spouse, parent, son or daughter, the employee must also provide certification that the employee is needed to provide care for the spouse, parent, son or daughter. The Certification of Health Care Provider form is available from Human Resources. OCCC may also require proof of relationship.

4.1.4 Eligible Employees who request FMLA Leave for Qualifying Exigency Leave must provide certification of deployment and may be required to provide proof of relationship.

4.1.5 Eligible Employees who request FMLA Leave for Military Caregiver Leave must provide certification of a Serious Illness or Injury incurred or aggravated by active duty. They may also be required to provide proof of relationship or next of kin status.

4.2 OCCC may delay leave to employees who do not provide proper advance notice of a foreseeable need for leave.

4.3 OCCC may delay or deny approval for FMLA Leave due to lack of proper health care provider certification, proof of deployment or certification that the injury or illness was incurred or aggravated by active duty, as applicable.

## 5.0 OTHER EMPLOYMENT

5.1 Employees may not perform work for self-employment or for any other employer during an approved period of FMLA Leave, except when OCCC has approved the employment under its Outside Employment or Extended Professional Development policy and the employee's reason for FMLA Leave does not preclude the outside employment.

## 6.0 COORDINATION WITH OTHER LEAVE

6.1 When leave is taken for a Qualifying Reason, vacation leave, sick leave, personal leave, leave without pay, long-term disability and worker's compensation leave run concurrently with FMLA leave.

6.2 Employees on FMLA Leave must exhaust all accumulated paid leave and banked leave before using unpaid FMLA Leave, unless the employee is on worker's compensation leave.

## 7.0 BENEFITS DURING FMLA LEAVE

7.1 Employees taking FMLA Leave are entitled to receive employer group health benefits during the leave at the same level and terms of coverage as if they had been working throughout the leave. If applicable, arrangements will be made for employees to pay their share of health insurance premiums while on leave. If an employee chooses not to return from FMLA Leave, OCCC may recover premiums it paid to maintain health insurance coverage during the leave.

7.2 The employee's use of FMLA Leave will not result in the loss of any employment benefit that accrued prior to the start of the employee's leave. However, benefits that accrue according to length of service (such as vacation

days, sick days, holidays and personal days) do not accrue during periods of unpaid leave.

8.0 JOB RESTORATION AFTER FMLA LEAVE

8.1 OCCC will generally reinstate an employee returning from FMLA Leave to the same or equivalent position with equivalent pay, benefits and other employment terms and conditions. However, an employee on FMLA Leave does not have any greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously working instead of on FMLA Leave.

8.2 Certain highly compensated key employees also may be denied reinstatement when necessary to prevent "substantial and grievous economic injury" to OCCC's operations. A "key" employee is an eligible salaried employee who is among the highest paid ten percent of OCCC's employees within 75 miles of the worksite. Employees will be notified of their status as a key employee, when applicable, after they have requested FMLA Leave.

9.0 PROMPT IDENTIFICATION OF FMLA QUALIFYING LEAVE

Prompt identification and designation of leave taken for an FMLA Qualifying Reason benefits both OCCC and its employees. Any employee who requires time off for what he or she believes may be an FMLA Qualifying Reason should contact the Director of Benefits. Supervisors who learn that an employee needs time off for a reason that may be an FMLA Qualifying Reason should contact the Director of Benefits.

Legal References: 29 U.S.C. §2611 *et seq.*  
29 C.F.R. Part 825  
Oklahoma Constitution, Article II Section 35  
Oklahoma Statutes, Title 43 Section 3.1

Adopted as Board of Regents Internal Operating Policy 211: August 5, 1993

Revised and Renumbered Effective: July 1, 2007

Revised: January 16, 2009

Revised: July 22, 2013

Revised: September 30, 2013

Revised: November 11, 2014

# EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

## Basic Leave Entitlement

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

- for incapacity due to pregnancy, prenatal medical care or child birth;
- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son, daughter or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

## Military Family Leave Entitlements

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 servicemember during a single 12-month period. 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 definitions of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".**

## Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

## Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months\*, and if at least 50 employees are employed by the employer within 75 miles.

**\*Special hours of service eligibility requirements apply to airline flight crew employees.**

## Definition of Serious Health Condition

A serious health condition is an illness, injury, 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 at least two visits to a health care provider or one visit and

a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

## Use of Leave

An employee does not need to use this leave entitlement in one block. Leave 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.

## Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

## Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

## Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

## Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

## Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

**FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulation 29 C.F.R. § 825.300(a) may require additional disclosures.**



For additional information:  
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627  
[WWW.WAGEHOUR.DOL.GOV](http://WWW.WAGEHOUR.DOL.GOV)

U.S. Department of Labor | Wage and Hour Division



WHD Publication 1420 - Revised February 2013