

## **06:02:08:00 Family, Medical and Service Member Leave Policy**

### **Purpose:**

In compliance with the Family and Medical Leave Act of 1993, as amended (“FMLA” or “the Act”), it is the policy of Dyersburg State Community College (DSCC) to provide eligible employees up to 12 workweeks of leave during a 12-month period for family or medical leave, or for a qualifying exigency; or, up to 26 workweeks of leave for military caregiver leave during a 12-month period for reasons specified in this Policy, to provide continued health insurance coverage during the leave period and to insure employee reinstatement to the same or an equivalent position following the leave period.

### **Scope:**

This policy applies to all DSCC employees who meet the following employee eligibility requirements:

- Must have worked for the State for at least 12 months and
- Must have worked at least 1,250 hours during the year preceding the start of the leave.

The determination of whether an employee meets the eligibility criteria for receiving FMLA leave is based on the amount of service (including prior service) the employee has as of the date the leave actually begins.

The policy does not apply to student workers or adjunct faculty.

Further details on eligibility can be found on TBR Policy 5.01.01.14 – Section I.

<https://policies.tbr.edu/policies/family-medical-and-servicemember-leave>

### **FMLA Qualifying Events (Leave Entitlement)**

#### **A. Family Leave**

- The birth of a son/daughter and to care for the newborn child. In addition to leave taken after the birth of a child, FMLA leave may be taken by an expectant mother for the purpose of prenatal visits, pregnancy-related symptoms, and in situations where a serious health condition prevents her from performing her job duties prior to the child’s birth. Husbands may also use FMLA to accompany an expectant spouse to prenatal visits, to care for an expectant spouse with a serious health condition, or if needed to care for the spouse following the birth of the child if the spouse has a serious health condition.
- The adoptive or foster care placement of a son or daughter with the employee.
- To care for the employee’s spouse, son, daughter, or parent with a serious health condition.

B. Medical Leave – the employee has a serious health condition resulting in his/her inability to perform job functions.

- An employee is unable to perform the functions of his/her position if the Health Care Provider (“HCP”) finds that the employee is: (1) unable to work at all; or, (2) unable to perform any one of the position’s essential functions within the meaning of the ADAAA, 42 USC 12101, et.seq., and the regulations at 29 CFR Sec. 1630.2(n). For FMLA purposes, the essential functions must be determined with reference to the employee’s position when the notice is given or the leave commenced, whichever is earlier.
- An employee absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

C. Service Member (or Military Family) Leave

“Qualifying Exigency.”

Employees with a spouse, son, daughter, or parent (“the service member”) on covered active duty or a Federal call to covered active duty in the regular Armed Forces, the National Guard or Reserves, or a retired member of the regular Armed Forces or Reserves may use leave to address exigencies listed below arising out of the covered active duty or impending covered active duty deployment of the service member to a foreign country.

Military Caregiver Leave

- An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the covered service member who has a serious injury or illness incurred in the line of duty while on covered active duty provided that such injury or illness may render the service member medically unfit to perform his/her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list. A serious health condition also includes any injury or illness that existed before the beginning of the service member’s covered active duty that was aggravated by service in the line of duty on covered active duty
- An employee may take up to 26 workweeks of leave on a per service member, per injury/illness basis during a 12-month period, beginning on the first day of leave. However, no more than 26 workweeks of leave may be taken within any single 12-month period.
- “Next of kin” means the nearest blood relative other than the covered service member’s spouse, parent or child designated by the service member.

Further details on Qualifying Events can be found on TBR Policy 5.01.01.14 – Section II.

<https://policies.tbr.edu/policies/family-medical-and-servicemember-leave>

FMLA Definitions:

According to the FLMA, a “serious health condition” means an illness, injury, impairment, or physical or mental condition involving any of the following:

- Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity; or,
- Continuing treatment by a HCP which includes:

1. A period of incapacity lasting more than 3 consecutive, full calendar days, and any

2. subsequent treatment or period of incapacity relating to the same condition that also includes treatment 2 or more times by or under the supervision of a HCP (i.e., in-person visits the first within 7 days and both within 30 days of the first day of incapacity); or, treatment on at least one occasion by a HCP (i.e., an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy).
  - Any period of incapacity related to pregnancy or for prenatal care. A visit to the HCP is not necessary for each absence; or
  - Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a HCP, and may involve episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). A visit to a HCP is not necessary for each absence; or
  - A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, severe stroke, or terminal stages of a disease). Only supervision by a HCP is required, rather than active treatment; or,
  - Any absences to receive multiple treatments, including any period of recovery therefrom, for restorative surgery after an accident or other injury; or, for a condition that would likely result in a period of incapacity of more than 3 days if not treated.

Further details on FMLA Definitions can be found on TBR Policy 5.01.01.14 – Section I.

<https://policies.tbr.edu/policies/family-medical-and-servicemember-leave>

#### Determination of the 12 Workweek/26 Workweek Period

#### Limitations on Length and Duration

- Eligible employees are entitled to up to a total of 12 workweeks of leave for family or medical leave and for a qualifying exigency under service member leave; and, up to 26 workweeks of leave to care for a service member with an injury or illness during a 12-month period. The initial 12-month period starts on the date the employee's FMLA leave first begins. A new 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period.
- A holiday that occurs within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. Exception: If the College is temporarily closed for work for 1 or more weeks (e.g., closing for the Christmas/New Year holiday, summer breaks), those days do not count as FMLA leave. If the employee takes intermittent leave, the holiday is not counted unless the employee would have been scheduled to work the holiday.
- Overtime hours. If the employee is normally scheduled to work overtime but is unable to do so because of his/her serious health condition, the overtime missed may be counted as FMLA leave.
- Part-time employees receive FMLA leave on a pro rata or proportional basis.

#### Use of an intermittent or reduced leave schedule.

- "Intermittent Leave" is leave taken in separate blocks of time due to a single qualifying reason and may include leave periods from an hour to several weeks. A "reduced leave schedule" reduces an employee's usual number of working hours per workday or workweek.
- An employee may take intermittent FMLA leave or have a reduced leave schedule over a 12-month time period

when medically necessary for: (1) planned and/or unanticipated medical treatment of a serious health condition by or under the supervision of a HCP, (2) recovery from the condition, (3) recovery from treatment of the condition, or (4) to provide care to an immediate family member with a serious health condition. Employees may not use intermittent FMLA leave following the birth of a child, or adoptive or foster care placement for any reason other than medical necessity.

- Intermittent leave or a reduced schedule may also be used for absences where the employee or family member is incapacitated or unable to perform the position's essential functions due to a chronic serious health condition even if treatment is not rendered by a HCP.
- If an employee requests intermittent leave or leave resulting in a reduced work schedule, the employer may require that the employee transfer temporarily to another position for which the employee is qualified and which better accommodates the employee's need for recurring leave periods.
- The employer must account for intermittent or reduced leave using an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave provided that it is not greater than one hour and provided further that an employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken.

Further details on Determination of the 12/26 Workweek periods can be found on TBR Policy 5.01.01.14 – Section IV. <https://policies.tbr.edu/policies/family-medical-and-servicemember-leave>

## Employee Notice Requirements

### A. General

- An employee giving notice of the need for FMLA leave does not need to expressly assert rights under the Act or even mention the FMLA to meet his or her obligation to provide notice though the employee would need to state a qualifying reason for the needed leave and otherwise satisfy the notice requirements. However, if the employee fails to explain the reasons for the leave, the request may be denied.

### B. Foreseeable leave

- Timing of notice –
  - The employee must provide at least 30 days advance notice before the leave is to begin, or if 30 days is not practicable, as soon thereafter as possible. The employer may require the employee to explain the reasons why notice was not given at least 30 days prior to the leave.
  - Notice need be given only once but the employee shall advise the employer as soon as practicable if dates of scheduled leave change, are extended, or were initially unknown.
- Content of notice
  - An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs FMLA-qualifying leave and the anticipated timing and duration of the leave.
  - The employer may request medical certification to support the need for the leave to determine if the condition qualifies as a serious health condition. The employer may request certification to support the need for leave for a qualifying exigency or for military caregiver leave.
  - An employee has an obligation to respond to an employer's questions designed to determine whether an absence is potentially FMLA-qualifying. Failure to respond to reasonable employer inquiries may result in denial of FMLA protection if the employer is unable to determine whether the leave is FMLA-qualifying.
  - An employer may require an employee to comply with the employer's usual and customary notice and

procedural requirements for requesting leave, absent unusual circumstances.

- Scheduling leave

- The employee must consult with the employer and make a reasonable effort to schedule planned medical treatments so as not to unduly disrupt the employer's operations subject to the approval of the HCP.
- Intermittent leave or leave on a reduced schedule must be medically necessary due to a serious health condition, injury or illness. The employee and employer shall attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting the employer's operation, subject to the approval of the health care provider.

### C. Unforeseeable Leave

- Timing of notice

- An employee must provide notice as soon as practicable under the facts and circumstances of the case.
- Notice may be given by the employee's spokesperson if the employee is unable to do so personally.

Further details on Determination of Employee Notice Requirements can be found on TBR Policy 5.01.01.14 Section V. <https://policies.tbr.edu/policies/family-medical-and-servicemember-leave>

### Employer Notice Requirements

Posting general notice.

- All employers are required to post, in conspicuous places, notices explaining the provisions of the FMLA. Electronic posting is sufficient.

Further details on Employer Notice Requirements can be found on TBR Policy 5.01.01.14 – Section VI. <https://policies.tbr.edu/policies/family-medical-and-servicemember-leave>

### Designation Notice and Certification

Details on Employer Designation can be found on TBR Policy 5.01.01.14 – Section VII. Additional details of Employer Form are shown below under Policy

Details on Certification can be found on TBR Policy 5.01.01.14 – Sections VIII, IX, X, and XI. Additional details of Required Forms are shown below under Policy <https://policies.tbr.edu/policies/family-medical-and-servicemember-leave>

### Intent to Return to Work

- An employer may require an employee on FMLA leave to report periodically on his/her status and intent to return to work.
- If an employee gives an unequivocal notice of intent not to return to work, the employer's obligations under FMLA to maintain health benefits and to restore the employee cease. However, these obligations continue if the employee indicates he/she may be unable to return to work but expresses a continuing desire to do so.
- An employee may need more leave than initially requested or the employee may not need as much leave as initially requested. In the latter instance, the employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave.

Details on Employee Intent to Return to Work can be found on TBR Policy 5.01.01.14 – Section XII.

<https://policies.tbr.edu/policies/family-medical-and-servicemember-leave>

### Fitness-for-Duty Certification

- As a condition for restoring an employee whose own serious health condition required FMLA leave, the employee is required to provide certification from their HCPs that the employee is able to resume work.
- The certification must state that the employee is able to resume work. Additionally, the employer may require the certification to specifically address the employee's ability to perform the essential functions of his/her job. In order to do so, the employer must provide the employee with a list of the essential functions of his/her job no later than with the designation notice. The designation notice must indicate that the certification must address the employee's ability to perform those essential functions.
- The employer may not require a new certification after each absence if the employee is on intermittent or reduced scheduled leave.

Details on Fitness for Duty Certification can be found on TBR Policy 5.01.01.14 – Section XIII.

<https://policies.tbr.edu/policies/family-medical-and-servicemember-leave>

Details on Failure to Provide Certification can be found on TBR Policy 5.01.01.14 – Section XIV.

<https://policies.tbr.edu/policies/family-medical-and-servicemember-leave>

### Job Restoration

#### Right to Reinstatement

Upon returning from FMLA leave, an employee must be restored to his/her original position or to an equivalent position. An equivalent position is one that is virtually identical to the former position in terms of pay, benefits and working conditions, including privileges, perquisites and status. This involves restoration to a position having the same or substantially similar duties and responsibilities and having substantially equivalent skill, effort, responsibility and authority.

Details on Job Restoration can be found on TBR Policy 5.01.01.14 – Section XV.

Details on Prohibition against Interfering with Employee Rights can be found on TBR Policy 5.01.01.14 – Section XVI.

<https://policies.tbr.edu/policies/family-medical-and-servicemember-leave>

### Recordkeeping

Records must be made, kept and preserved in accordance with the recordkeeping requirements of the Fair Labor Standards Act. The records must be kept for no less than 3 years and made available for inspection, copying and transcription by representatives of the Department of Labor upon request.

Details on Recordkeeping can be found on TBR Policy 5.01.01.14 – Section XVII. Additional details of Employer Form are shown below under Policy

<https://policies.tbr.edu/policies/family-medical-and-servicemember-leave>

### Impact of FMLA Leave on Health Insurance and Other Benefits

Details on the Impact of FMLA on Health Insurance and Other Benefits can be found on TBR Policy 5.01.01.14 – Section XVIII.

Other benefits include longevity, leave accrual, and ATN pay increases. <https://policies.tbr.edu/policies/family-medical-and-servicemember-leave>

## **Policy:**

The following procedures are to be followed for employees requesting Family Medical Leave:

The employee should complete the Request for Family Medical Leave Form at least 30 days in advance, if possible. (Care of a servicemember is also included in these procedures). The Request for Family Medical Leave can be accessed through MyDSCC – Employee Forms – FML or through link shown below:

<https://intweb.dsc.edu/luminis/personnel/forms/FMLA%20Request%20form.pdf>

Upon receipt of Request Form signed by employee and supervisor, Human Resources will determine if the employee meets the eligibility requirements for FML. If eligibility is determined, Human Resources will send the employee one of the medical certifications for the employee to have completed by a Health Care Provider (HCP) to indicate the need for the request. Both certifications (one is the Physician Certification for Employee's Serious Medical Condition and one is the Physician's Certification for a Family Member's Serious Medical Condition, Both forms are located under MyDSCC – Employee Forms – FML.

Upon receipt of the medical certification, Human Resources will notify the employee with a Designation Notice that their request for FML is approved.

At the end of each month, the employee on FML will complete the Family Medical Leave Reporting Form which can be accessed through MyDSCC – Employee Forms – FML or through link shown below:

<https://my.dsc.edu/html/common/dynforms.jsp?>

[url=https://dynamicforms.ngwebsolutions.com/Submit/Form/Start/8adf93d3-d068-4468-aec7-30c1a4a0f419.](url=https://dynamicforms.ngwebsolutions.com/Submit/Form/Start/8adf93d3-d068-4468-aec7-30c1a4a0f419)

The employee will notate how many hours of sick or annual leave were used that month towards FML. If there is any comp time accrued, that should be used once all sick leave has been exhausted and before any annual leave is used.

For an employee who does not have any available accrued leave or is not a member of the sick leave bank, leave without pay (lwop) would be notated on the form.

The FML Reporting Form is due in the Human Resources Office by the 5th of each month following the month leave was used.

Human Resources will keep a spreadsheet showing the monthly leave usage for the employee to keep track of the 12 weeks/450 available hours of FML over a 12-month period starting with the first day of usage.

All FML paperwork is HIAPPA-protected and is kept in a separate locked file in the Human Resources Office.

## **Compliance:**

All DSCC employees are expected to adhere to this policy as agreed upon in the employee's employment agreement.

Violation of the policy may lead to disciplinary action.

## **Definitions:**

**HCP** – Health Care Provider

**FML** – Family Medical Leave or

**FMLA** – Family Medical Leave Act

**HIPPA** – Health Insurance Portability and Accountability Act of 1996 – Protects individual's health information, whether electronic, written, or oral.

<https://www.hhs.gov/hipaa/for-individuals/index.html>

## **Revision History:**

Policy written June, 1995. Policy revised January 2013; approved by Administrative Council on 02/22/13. Revised and approved by Administrative Council on 12/1/20.