

## **FAMILY MEDICAL LEAVE ACT**

*Colorado Mountain College Policy – November 2012*

### **Family and Medical Leave (FMLA Leave)**

The College provides up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- 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 or daughter, or parent, who has a serious health condition;
- Serious health condition that makes the employee unable to perform the employee's job.

### **Military Family Leave Entitlements**

Eligible employees with a spouse, son, daughter, or parent on active duty or called to active duty status in the Armed Forces, National Guard, or Reserves 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.

Eligible employees may also 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 a current member of the Armed Forces, National Guard, or Reserves, who has a serious injury or illness incurred or aggravated in the line of duty on active duty. Covered service member also includes veterans who were members of the Armed Forces, National Guard, or Reserves at any time during the period of five years preceding the start of treatment, recuperation, or therapy.

The injury or illness must make the service member medically unfit to perform his or 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. In the case of a veteran, the qualifying illness or injury must be incurred or aggravated in the line of duty and manifest itself before or after the service member became a veteran.

### **Benefits and Protections**

During FMLA leave, the College maintains the employee's health coverage under any group health plan on the same terms as if the employee had continued to work. Employees must continue to pay their portion of any insurance premium while on leave. If the employee is able but does not return to work after the expiration of the leave, the employee will be required to reimburse the College for payment of insurance premiums during leave.

Upon return from FMLA leave, most employees are restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. Certain highly compensated employees (key employees) may have limited reinstatement rights.

There may be different rules for instructional employees on a less than 12-month employment term .

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave. As with other types of unpaid leaves, paid leave will not accrue during the unpaid leave. Holidays, funeral leave, or employer's jury duty pay are not granted on unpaid leave.

## **Eligibility Requirements**

Employees are eligible if they have worked for this College for at least 12 months, for 1,250 hours over the previous 12 months.

## **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 a 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 full 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**

The maximum time allowed for FMLA leave is either 12 weeks in the 12-month period as defined by the College, or 26 weeks as explained above. The eligible period covers the last 12 months beginning at the commencement of the leave. This is defined as "rolling" 12-month period, measured backward from the date an employee uses any FMLA 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 College's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Employees taking intermittent or reduced schedule leave based on planned medical treatment and those taking intermittent or reduced schedule family leave with the College's agreement may be required to temporarily transfer to another job with equivalent pay and benefits that better accommodates that type of leave.

## **Substitution of Paid Leave for Unpaid Leave**

The College requires employees to use accrued paid leave, if eligible, while taking FMLA leave. FMLA leave is an unpaid leave. The College does require employees to utilize all accrued and applicable paid leave, including compensatory time, concurrent with FML. Usage of all leave will be in compliance with the appropriate leave policy. Failure to follow applicable leave policies may result in an unpaid leave status (FML). In cases where FML entitlement continues beyond applicable paid leave, the remainder of the FML will be unpaid.

When an employee is unable to work due to a workers' compensation claim, FML will also run concurrent with the workers' compensation leave. Because this is a paid leave (from workers' compensation) the employee is not eligible to utilize leave balances to supplement compensation. If an employee stops receiving compensation from a workers' compensation claim and is still eligible for FML, they will then utilize appropriate leave balances.

## **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 the College's normal call-in procedures.

Employees must provide sufficient information for the College 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 College 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. The College may require second and third medical opinions at the College's expense. Documentation confirming family relationship, adoption or foster care may be required. If notification and appropriate certification are not provided in a timely manner, approval for leave may be denied. Continued absence after denial of leave may result in disciplinary action in accordance with the College's attendance guideline.

Should circumstances change permitting the employee to return to work earlier than anticipated the employee must provide the College within two business days of the changed circumstances where foreseeable.

## **The College's Responsibilities**

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

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

## **Unlawful Acts**

FMLA makes it unlawful for the College to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- 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 the College.

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.

## **Definitions**

**Eligible Employee** - an employee who has been employed for at least 12 months and has actually worked at least 1250 hours in the twelve months preceding the need for leave.

**Eligible Child** - a son or daughter under 18 years of age who is biological, adopted, foster child, step-child, legal ward or a child of an employee standing in loco parentis. Also, an eligible child is one who is 18 years or older and incapable of self-care because of a mental or physical disability.

**Parent** - the biological parent of an employee or an individual who stood in loco parentis to an employee. This does not include parents of a spouse.

**Spouse** - Husband, wife, or common law spouse.

**12-month Period** – covers the last 12 months beginning at the commencement of the leave. This is defined as a “rolling” 12-month period measured backward from the date an employee uses any FMLA leave.

**Health Care Provider** - a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or any other person determined by the Secretary of Labor to be capable of providing health care services.

**Reduced Leave Schedule** - a leave schedule that reduces the usual number of hours per workweek, or per workday of an employee.

**Please contact Human Resources at 947-8301 with questions.**