

**LOUISIANA COMMUNITY & TECHNICAL COLLEGE SYSTEM**  
**Policy # 6.041**

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**Title: FAMILY AND MEDICAL LEAVE FOR ALL EMPLOYEES**

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The Louisiana Community and Technical College System (LCTCS) is committed to complying with all applicable federal employment laws including the Family and Medical Leave Act of 1993 and its subsequent amendments.

Formerly incorporated in the policy on “Leave Record Establishment and Regulations for All Unclassified, Non-Civil Service Employees”, LCTCS HR Policy # 6.003, this policy is being separated into a standalone policy to emphasize the applicability of the provisions of the Family and Medical Leave Act to both unclassified (non-civil service) and classified (civil service) employees of the LCTCS.

**Eligibility**

1. Eligible employees are those who have been employed for a total of at least twelve (12) months in state service. The twelve months need not be consecutive, however, break(s) in service cannot exceed 7 years.
2. Eligible employees must also have worked at least 1,250 hours in the twelve (12) month period immediately preceding the requested leave. Hours worked do not include paid leave.

**Basic FMLA Leave Entitlement**

Eligible employees are entitled to up to twelve (12) work weeks of unpaid leave or up to 26 weeks of leave for military caregiver leave, in a single 12-month period. Note: from this point forward any reference to twelve (12) work weeks of leave also is meant to cover “or up to 26 weeks of leave for military caregiver leave”. For purposes of this policy, a year is defined as the twelve-month period beginning with the date the employee first uses FMLA designated leave.

FMLA leave may be granted to eligible employees for the following events:

*Family or Personal FMLA*

1. For the birth of a child and to care for and bond with the newborn child.
2. For placement with the employee of a child for adoption or foster care, and to bond with that child. Men and women have the same right to take FMLA leave to bond with their child but it must be taken within one year of the child’s birth or placement and must be

- taken as a continuous block of leave unless the employer agrees to allow intermittent leave.
3. For the care of an immediate family member i.e. spouse (wife or husband or same sex partner legally married according to the law of the place of celebration), child (including adult child, over 18 years of age, incapable of selfcare because of a mental or physical disability and child of domestic partner) or parent (but not parent-in-law) who has a serious health condition,
  4. For the employee's own serious health condition which prevents the employee from working and performing the essential duties of their job.

#### *Military Leave*

5. For qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent who is serving in the military is on or is called to "covered active duty" status and deployed to a foreign country as a member of the Regular Armed Forces, or as a member of the National Guard or Reserves.
6. To care for a covered service member who is the employee's spouse, child, parent or next of kin with a serious injury or illness incurred in the line of duty as a member of the Armed Forces, including the National Guard or Reserves. This includes covered veterans.

#### **Military FMLA Leave**

1. Qualifying Exigency FMLA leave of up to 12 work weeks of unpaid, jobprotected leave in a 12-month period may be granted to eligible employees for any "qualifying exigency" including to:
  - a. Address issues arising from the military member's short-notice deployment (seven or less days' notice). Leave can be taken for up to seven days.
  - b. Attend certain military events.
  - c. Arrange for alternative childcare.
  - d. Address certain financial and legal arrangements.
  - e. Attend certain counseling sessions.
  - f. Spend up to 15 calendar days with the military member who is on rest and recuperation leave during covered active duty.
  - g. To address certain issues related to care of the military member's parent who is incapable of self-care.
  - h. Attend post-deployment activities for up to 90 days following termination of the military member's covered active duty.
2. Military Caregiver FMLA leave of up to 26 workweeks of unpaid leave during a "single 12-month period" may be granted to eligible employees to care for a covered service member who is the employee's spouse, son, daughter, parent, or next of kin/nearest blood relative (designated in writing) with a serious illness or injury sustained in the line of duty while on active duty (or existed before the beginning of active duty and was aggravated by service in the line of duty) as a member of the Armed Forces, including the National Guard or Reserves. The term "covered service member" includes covered veterans. This military caregiver leave is available during "a single 12-month period" during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave. The "single 12-month period" for purposes of military caregiver leave is a period that

commences on the date an employee first takes leave to care for a covered service member with a serious injury or illness. Military caregiver leave is available once per service member per serious injury or illness.

### **Coordination with paid leave policies**

The LCTCS Board of Supervisors requires employees to use accrued paid leave, pursuant to the applicable leave policy or civil service rule, prior to using FMLA leave without pay. Paid leave used at the same time as FMLA leave may be used only for the appropriate leave purposes allowed for the designated leave by policy. Once the paid leave is exhausted, the employee will be placed on leave without pay. The paid leave time taken as well as any unpaid leave time for any of the conditions covered by the FMLA will count toward the twelve (12) weeks of FMLA leave, or twenty-six (26) weeks as applicable for military caregiver leave only.

1. Leave taken for a work related injury is also subject to the FMLA.
2. Employees are required to provide advance notice and medical certification whenever possible. Taking of paid or unpaid leave may be denied if the following requirements are not met:
  - a. The employee ordinarily must provide thirty (30) days advance notice when the leave is “foreseeable” unless it is medically impossible or impractical to provide such notice.
  - b. The employee must provide medical certification with a letter of request for the leave because of a serious health condition of the employee or a covered family member. This medical certification must be submitted within fifteen (15) calendar days of notice to use leave.
3. Intermittent leave or a reduced leave schedule may be approved by the department for birth or placement of a child through adoption or for foster care, the employee’s own serious health condition or that of a spouse, parent or child. Intermittent leave or a reduced leave schedule must be approved when medically necessary and certified by the physician. Intermittent leave may be taken for no less than minimum increments specified for the appropriate type of paid leave in the relevant policy or rule. If the employer has reasonable concerns about an employee’s ability to safely perform a job, the employer can require an employee to provide a fitness for duty certification before the employee may return to work from an absence while on intermittent leave.
4. Whenever an employee requests leave in any category for a purpose which is eligible under the FMLA (including military exigency/caregiver) he shall notify his immediate supervisor that the leave requested is FMLA leave. If the employee is unsure whether the leave is FMLA eligible, the supervisor should be consulted. Any questions concerning eligibility should be directed to the appropriate Office of Human Resources.
5. The appointing authority and his designated representatives may declare any leave taken to be under the FMLA after three days of any absence for a serious health condition where the employee has been under the care of a health care provider.
6. The appointing authority or the appropriate administrative officer may require second or third opinions (at the agency expense) and a fitness for duty report to return to work. If a third opinion is needed, the opinion will be final and binding. The fitness for duty (return to work) certification must specifically address whether the employee can perform the

essential functions of his or her job.

### **Limitations Regarding Leave Schedules**

Where a husband and wife are employed by the same LCTCS entity (i.e., the same college or the Board Office or are both state employees because the State of Louisiana is considered a single employer for FMLA purposes), they may take a combined total of 12 weeks if taking leave to care for the employee's parent with a serious health condition, for the birth of a child or to care for the child after birth, or for placement of a child with the employee for adoption or foster care or to care for the child after placement.

Spouses working for the same employer (including the State of Louisiana which is considered a single employer for FMLA purposes) are also limited to a combined total of 26 workweeks of leave during a "single 12-month period if leave is taken to care for a covered service member with a serious injury or illness.

### **Group Health Insurance**

If on leave without pay while on FMLA, the employee's health insurance coverage under the Office of Group Benefits will be maintained with the employer portion of the premium paid by the agency. The employee is required to make arrangements with human resources for payment of the employee portion of the health care premium. Should the employee fail to provide his share of the insurance premium per the agreement, LCTCS shall pursue repayment of these premiums upon return of the employee as allowed by the FMLA. Any supplemental insurance premiums for any other voluntarily elected benefit (e.g. dental, cancer, etc.) for which continued coverage is desired must be paid directly by the employee.

### **Return to Work**

Employees returning from FMLA must be restored to their former positions or equivalent positions with equivalent benefits. Key employees can be denied reinstatement if restoration to their job would cause "substantial and grievous economic injury" to the employer.

An employee returning from a medical FMLA leave will be required to present medical certification of fitness for duty.

Restoration may be denied under certain circumstances, including: 1. If it can be shown that the employee would not otherwise have been employed at the time reinstatement is requested (for example, his position was included in a layoff); 2. The employee fails to provide a required fitness for duty certificate to return to work; 3. The employee is no longer qualified for the position because of inability to attend a necessary course, renew a license, etc.; however, the employee should be given a reasonable opportunity to fulfill such conditions upon return to work; or 4. The employee is unable to perform the essential functions of the job because of a physical or mental condition, including the continuation of a serious health condition.

## **Retaliation**

It is unlawful for any employer to interfere with, restrain or deny the exercise of any right provided for under the FMLA. Employees may not be retaliated against for invoking the FMLA.

## **Definitions**

*Serious health condition* is defined as a condition that causes incapacity for more than three consecutive calendar days and requires ongoing medical treatment or an overnight stay in a hospital or other medical care facility; chronic conditions that cause occasional periods of incapacity requiring treatment by a health care provider at least twice a year; and pregnancy (including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest).

*Child* is a biological, adopted, or foster son or daughter; a stepchild; a legal ward; or a child of a person who has day-to-day responsibilities to care for or financially support that child. Children must be under age 18 unless they are incapable of self-care because of a mental or physical disability at the time that FMLA leave begins.

*Adoption* means legally and permanently assuming the responsibility of raising a child as one's own.

*Foster Care* means 24-hour care for children in substitution for, and away from, their parents or guardians.

*Parent* is a biological, adoptive, step or foster father or mother, or any other persons who had day-to-day responsibilities to care for and financially supported employees when they were children (i.e. stood in loco parentis). For FMLA purposes "parent" does not include parents-in-law.

*In Loco Parentis*. A person stands in loco parentis if that person provides day-to-day care or financial support for a child. Employees with no biological or legal relationship to a child can stand in loco parentis to that child, and are entitled to FMLA leave (e.g. an uncle who cares for his sister's children while she serves on active military duty, or a person who is co-parenting a child with his or her same-sex partner).

*Spouse* is a husband or wife, or same-sex partner legally married according to the law of the state/place of celebration and common law marriage partner if recognized in that state.

*Key Employee*. A key employee is a salaried, FMLA-eligible employee who is among the highest paid 10 percent of all the employees working for the employer within 75 miles of the employee's worksite. The "Key Employee" designation must be made at the time the employee requests leave.

*Covered Service member* refers to current service members of the Armed Forces, including National Guard and Reserves as well as covered veterans who are undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

*Covered Veteran* is an individual 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.

*Parental Care* is care of a military member's parent who is incapable of self-care. Parental care may include arranging for alternative care, providing care on an immediate need basis, admitting or transferring the parent to a care facility, or attending meetings with staff at a care facility.

*Covered Active Duty* means for members of the regular Armed Forces, duty during deployment to a foreign country; for members of the reserve components of the Armed Forces, (the National Guard and Reserves), duty during deployment with the Armed Forces to a foreign county under a call or order to active duty in support of a contingency operation.

*Deployment to a foreign country* means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States. It also includes deployment to international waters.