



SUBJECT: Personnel

PROCEDURE: 406.2.1 Family and Medical Leave

EFFECTIVE: March 2023

REVISED:

REVIEWED:

FMLA Procedure

The purpose of these Family and Medical Leave procedures is to provide guidance on the Family and Medical Leave Policy.

College Notice Requirements

Eligibility Notice

- Within five (5) business days of (1) an employee's request for FMLA leave, or (2) the college learning an employee's leave may qualify as FMLA leave, the college will provide written notice of the employee's eligibility for FMLA leave. If the college determines the employee is not eligible for FMLA, the notice will state the reason. If the employee is eligible for FMLA leave, the notice will provide additional information required by the FMLA regulations.

Designation Notice

- Within five (5) business days of the college's acquiring sufficient information to determine whether an employee's leave may qualify as FMLA leave, the college will notify the employee of whether the leave qualifies as FMLA leave. The notice will also advise of any fitness for duty requirements and, if known, the amount of FMLA leave exhausted.

Employee FMLA Notice Requirements

An employee requesting FMLA leave must provide:

College Notice Requirements

Eligibility Notice

- At least thirty (30) day advance oral or written notice of the need to take FMLA leave when the need is foreseeable; or
- Timely notice, as soon as possible and practical, when the need for FMLA is not foreseeable; and
- Sufficient information for the college to understand the leave is for an FMLA qualifying reason including, if known, the timing and duration of the leave.

If an employee fails to provide enough information to make a determination, the college may deny the FMLA leave.

Employees who are seeking additional leave because of a previously qualified FMLA reason, and who have not exhausted their FMLA leave benefits, must continue to provide sufficient information to Human Resources to allow proper recording, accounting, and tracking of the use of FMLA leave.

Certifications

Medical Certifications

Employees may be required to provide medical certifications for their own serious health condition, to care for a family member with a serious health condition, or to care for a covered service member with a Serious Injury or Illness. The college may request subsequent re-certifications during the course of the leave in accordance with the limitations set forth in the FMLA regulations.

Human Resources, not the employee's direct supervisor, may contact an employee's health care provider to authenticate or clarify a completed and sufficient medical certification. Human Resources may verify with the health care provider completed or authorized information on the certification, clarify handwriting on the form, or clarify the meaning of a response to a question on the form.

The college may deny FMLA leave if certifications are unclear and the employee fails to provide sufficient and complete certification.

Records and documents relating to medical certifications, re-certifications, or medical histories of employees or employees' family members will be maintained as confidential medical records in files separate from the usual personnel files, subject only to the limited exceptions set forth in the FMLA regulations.

Second and Third Medical Opinions

In cases where there is reason to doubt the validity of a required medical certification, the college may, at its own expense, require second and third opinions in accordance with FMLA regulations to resolve such doubts.

Certifications for Qualifying Exigency

Upon request, employees seeking qualifying exigency leave may be required to provide:

- A copy of the military member's covered active-duty orders or call to covered active-duty status; and
- A certification from the employee setting forth information concerning the nature of the Qualifying Exigency for which the leave is requested.

The college may request the covered active-duty orders only once. Subsequent separate calls to covered active duty may constitute a new request for qualifying exigency FMLA leave

An employee who provides the option Form WH-384 may not be required to provide additional certification.

Substituting Paid Leave

Under federal law, FMLA leave is unpaid. However, an employee may, and in some cases must, take certain accrued leave to run concurrently with an employee's FMLA leave entitlement. The substitution of accrued leave for unpaid FMLA leave time does not extend the length of FMLA leave.

Annual leave

As provided in [Sec. 2-18-615, MCA](#), employees may not be required to take accrued annual leave concurrently with FMLA leave if the reason for absence is illness. However, the employee may do so voluntarily.

Required use of sick leave.

Employees taking FMLA leave for purposes that also qualify for use of sick leave will be required to take accrued sick leave concurrently with FMLA leave.

Required use of compensatory time

Supervisors may require employees to use accrued compensatory time concurrently with all types of FMLA approved leave.

Required use of workers compensation related leave.

Leaves of absence taken in connection with a workers' compensation injury or illness will run concurrently with any FMLA leave entitlement. Once FMLA leave expires, employees will be responsible for self-paying the employer contribution in order to maintain health insurance benefit eligibility.

Health Insurance Benefits During FMLA Leave

Employees on approved FMLA leave are entitled to continue health insurance benefits. The college will continue to pay the employer contributions towards the employee's health insurance premium while the employee is on approved FMLA leave. If the employee is receiving pay from the college during the FMLA leave, the college will continue to deduct the employee portion of the health insurance premiums from the employee's paycheck. If the FMLA leave is unpaid, the employee must pay the employee portion of any health insurance premium on or before the due date determined by Human Resources.

If health insurance coverage lapses because an employee has not paid the employee's share of the health insurance premium, upon return to work, the college will restore the employee and their dependents to coverage/benefits equivalent to those the employee would have had if leave had not been taken and payments had not been missed.

If an employee fails to return to work for thirty (30) calendar days after FMLA leave entitlement has been exhausted and has not been approved for any other type of leave, the college may recover the cost of any employee share of health insurance premiums paid by the college during FMLA leave. The



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employee will not be required to reimburse the college if there is a recurrence or onset of a Serious Health Condition or a change of circumstances beyond the employee's control that justifies waiving the recovery.

FMLA Leave on Holidays

Employees may be paid holiday pay while on FMLA leave if they meet the requirement of the [Holiday policy](#). If an employee takes intermittent leave during a week a holiday occurs, the holiday is not counted towards the employee's FMLA leave unless the employee was scheduled to work the holiday and takes the day off for an FMLA qualifying reason. If an employee is using leave for the entire week, the college will count the entire week including the holiday as FMLA leave.

Return to Work or Reinstatement

An employee taking FMLA leave will be returned to the employee's same position, or to an equivalent position, unless the employee would have been terminated for reasons unrelated to the FMLA leave. FMLA leave will not result in any loss of benefits or seniority accrued prior to the beginning of the leave period unless the benefit or seniority has been discontinued for other employees without regard to the FMLA leave.

Enforcement

An employee who believes the college has violated the FMLA may contact the Great Falls College human resources office or:

MSU Human Resources
406-994-3651
Humanresources@montana.edu

MSU human resources representatives will provide the employee with enforcement options, including filing a complaint with the U.S. Department of Labor, Wage and Hour Division 1-866-847-9243, or on line at: www.wagehour.dol.gov. Complaints should be filed within a reasonable time and may not be filed more than two (2) years after the last action the employee contends was in violation of the FMLA or more than three (3) years if the violation was willful. An employee may also have enforcement options under a [collective bargaining agreement](#). The employee may contact their union representative to inquire about any options under a collective bargaining agreement.

References

The U.S. Department of Labor provides several [resources and forms](#) which may provide helpful information regarding the FMLA.