

	<b>Family and Medical Leave</b>	
<b>Human Resources</b>	<b>Administrative Procedure P91-6</b>	Revised 06/05, 03/06 June 2016 <b>Page 1 of 10</b>

## 1.0 Family and Medical Leave Objective and Responsibilities

It is the policy of Columbia Basin College (“CBC” or the “College”) to grant up to twelve (12) workweeks of unpaid, job-protected leave every twelve (12) months to eligible employees for qualifying reasons in compliance with the Family and Medical Leave Act of 1993 (FMLA) and Washington State law.

It is also the policy of CBC to grant an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember who is recovering from a serious illness or injury sustained in the line of duty on active duty up to twenty-six (26) workweeks of leave in a single twelve (12) month period to care for the servicemember in compliance with the FMLA as amended by the National Defense Authorization Act of 2008.

CBC complies with the federal FMLA and all applicable state laws related to family and medical leave, as existing or hereafter amended. This means that, in cases where the law grants more leave than the College’s policies provide, the College will provide the leave required by law. Additionally, CBC complies with the leave negotiated for represented employees as set forth in collective bargaining agreements between the College and employee organizations. Nothing herein modifies the terms of an applicable collective bargaining agreement.

- 1.1 The Vice President of Human Resources & Legal Affairs is responsible for ensuring leave is administered in good faith and consistent with the rights and responsibilities provided by statute or this procedure and providing information and training specific to these rights and responsibilities.
- 1.2 Supervisors are responsible for managing their staff’s leave and keeping both the employee and the Human Resources (HR) Office informed of changes in status, rights, and need for information. Additionally, supervisors are responsible for ensuring that no employee returns to work without first confirming with the HR Office that the appropriate fitness-for-duty release is on file.
- 1.3 Employees are responsible for reporting leaves and providing the notice and information necessary for the College to effectively administrate this procedure and direct its workforce.

## 2.0 Eligibility for FMLA

An eligible employee is one who meets all of the following conditions:

- 2.1 The employee must have worked for CBC or another Washington State agency or institution of higher education for at least twelve (12) months (need not be consecutive) prior to the date the leave would begin. Periods of service prior to a break in service of seven (7) years or longer will generally not be counted toward the twelve (12) months.
- 2.2 The employee must have been employed for at least 1,250 hours during the twelve (12) month period immediately preceding the date the leave would begin. Except for military leave, the 1,250-hour requirement does not count unpaid leave and paid time off (i.e., vacation leave, sick

leave, personal holidays, compensatory time or shared leave). Collective bargaining agreements may have different accounting for time requirements.

- 2.3 The employee must not have already exhausted the current period's twelve (12) week FMLA leave entitlement.

### **3.0 General Provisions**

- 3.1 CBC will grant up to twelve (12) workweeks of job-protected leave in a twelve (12) month period to eligible employees, in accordance with the FMLA and this procedure for one or more of the following reasons:

3.1.1 The birth and care of a newborn child in the first twelve (12) months after childbirth.

3.1.2 The placement of a child with the employee for adoption or foster care and to care for the newly placed child within the first twelve (12) months of placement.

3.1.3 To care for an employee's spouse, child, or parent who suffers from a serious health condition.

3.1.4 The employee's own serious health condition that renders the employee unable to perform the essential functions of his or her job.

3.1.5 Due to a qualifying exigency arising out of the fact that a spouse, child, or parent of an eligible employee is on covered active duty or has been notified of impending call to covered active duty in the Armed Forces.

- 3.2 CBC will grant up to twenty-six (26) workweeks of leave to an eligible employee who is the spouse, child, parent or next of kin of a covered servicemember during a single twelve (12) month period to care for a covered servicemember with a serious illness or injury incurred in the line of duty. The single twelve (12) month period for leave to care for a covered servicemember commences on the first day the employee takes leave for this reason and ends twelve (12) months later, regardless of the twelve (12) month period established for other types of FMLA leave.

3.2.1 During the single twelve (12) month period, eligible employees are limited to a combined total of twenty-six (26) workweeks of leave for servicemember caregiver leave and FMLA leave for other qualifying reasons.

### **4.0 Definitions**

- 4.1 Contingency operation means a military operation that:

4.1.1 Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations or hostilities against an enemy of the United States or against an opposing military force; or

4.1.2 Results in the call or order to, or retention on, active duty of members of the uniformed services under Section 688, 12301(a), 12302, 12304, 12305 or 12406 of Title 10 of the United States Code, Chapter 15, or any other provision of law during a war or during a national emergency declared by the President or Congress.

- 4.2 Covered active duty or call to covered active duty status means:

4.2.1 In the case of a member of the Regular Armed Forces (e.g. not reserve or guard), duty during the deployment of the member with the Armed Forces to a foreign country; and

4.2.2 In the case of a member of the Reserve components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of Title 10, United States Code.

4.3 Covered servicemember means:

4.3.1 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 serious injury or illness.

4.3.2 A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

4.3.2.1 Covered veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five (5) year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

4.4 Foster care means 24-hour care for children in substitution for, and away from their parents or guardian.

4.5 Health care provider means:

4.5.1 A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

4.5.2 Any other person determined by the Secretary of Labor to be capable of providing health care services. Others "capable of providing health care services" include only:

4.5.2.1 Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State, and performing within the scope of their practice as defined under State law;

4.5.2.2 Nurse practitioners, nurse midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

4.5.2.3 Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

4.5.2.3.1 Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement.

4.5.2.4 Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

- 4.5.2.5 Health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.
- 4.5.3 The phrase “authorized to practice in the State” as used in this section means that the provider must be authorized to diagnose and treat physical or mental conditions.
- 4.6 *In loco parentis* means someone with day-to-day responsibilities to care for and financially support a child, or in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
- 4.7 Intermittent leave means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks.
- 4.8 Next of kin of a covered servicemember means the nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA:
- 4.8.1 Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions;
- 4.8.2 Brothers and sisters;
- 4.8.3 Grandparents;
- 4.8.4 Aunts and uncles; and
- 4.8.5 First cousins.
- 4.9 Outpatient status means, with respect to a covered servicemember who is a current member of the Armed Forces the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
- 4.10 Parent means the biological, adoptive, step or foster parent of an employee or an individual who stands or stood *in loco parentis* to an employee when the employee was under eighteen (18) or incapable of self care. This does not include parents-in-law.
- 4.11 Qualifying exigency leave means leave due to a qualifying exigency arising out of the fact that a spouse, child or parent of the employee is on covered active duty or has been notified of impending call to covered active duty in the Armed Forces in support of a contingency operation. Exigency leave may be taken on an intermittent basis. The qualifying exigency may include any (one or more) of the following:
- 4.11.1 Short-notice deployment
- 4.11.2 Military events and related activities
- 4.11.3 Child care and school activities
- 4.11.4 Financial and legal arrangements

- 4.11.5 Counseling
  - 4.11.6 Rest and recuperation
  - 4.11.7 Post-deployment activities
  - 4.11.8 Additional activities not encompassed in the other categories but agreed to by the employee and the College.
- 4.12 Reduced leave schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.
- 4.13 Serious health condition means an illness, injury, impairment or physical or mental condition as defined in § 825.113 that involves inpatient care as defined in § 825.114 or continuing treatment by a health care provider as defined in § 825.115. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not “serious health conditions” unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of § 825.113 are met.
- 4.14 Serious injury or illness means:
- 4.14.1 In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating; and
  - 4.14.2 In the case of a covered veteran, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:
    - 4.14.2.1 A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember’s office, grade, rank, or rating; or
    - 4.14.2.2 A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50% or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or
    - 4.14.2.3 A physical or mental condition that substantially impairs the covered veteran’s ability to secure or follow a substantially gainful occupation by reason of disability or disabilities related to military service, or would do so absent treatment; or
    - 4.14.2.4 An injury, including psychological injury, which is the basis on which the covered veteran has been enrolled in the Department of Veterans’ Affairs Program of Comprehensive Assistance for Family Caregivers.

4.15 Son or daughter (or child) means:

4.15.1 For purposes of FMLA used to care for a family member with a serious health condition that is not military caregiver leave, a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age eighteen (18) or age eighteen (18) or older and “incapable of self care because of a mental or physical disability” at the time that FMLA leave is to commence.

4.15.2 For purposes of FMLA used for military family leave for an exigency or for military caregiver leave for a covered servicemember, a biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom the covered servicemember stood *in loco parentis*, and who is of any age.

4.16 Spouse means a husband or wife as defined or recognized in the State where the individual was married and includes individuals in a same-sex marriage or common law marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States if the marriage could have been entered into in at least one State.

4.17 Twelve (12) month period for the purposes of calculating the amount of FMLA leave an eligible employee may request, means a rolling twelve (12) month period measured forward from the date an employee begins FMLA leave.

## **5.0 Continuation of Benefits**

5.1 An employee on leave under the FMLA will continue to receive the same level of employer-paid group medical, dental, basic life, and accidental death and dismemberment benefits while on leave and under the same conditions as if the employee had continued to work.

5.2 During paid leave, the College will continue to make payroll deductions for the employee’s share of the health care and other premiums. During unpaid leave, the employee must continue to make these payments. The payments are to be submitted to the HR Office by check or money order payable to Columbia Basin College. When an employee takes unpaid FMLA leave, the employee will be required to indicate on the FMLA request form how he or she intends to pay the employee’s share of premiums during their absence. If an employee is more than sixty (60) days late in paying his or her premiums, the employer’s obligation to maintain health insurance coverage ceases under the FMLA. If this occurs, insurance coverage will end as of the last day of the month for which a full premium was paid.

5.3 If an employee chooses not to return to work at the conclusion of their unpaid FMLA leave for reasons other than a continued serious health condition of the employee or the employee’s family member, or a circumstance beyond the employee’s control, the employee will be required to reimburse the College for the College’s contribution or share of health care benefits paid for the employee during the FMLA leave period.

## **6.0 Leave Coverage and the Twelve Month Period**

6.1 Measuring the Twelve (12) Month Period – An eligible employee can take up to twelve (12) workweeks of leave during a twelve (12) month period measured forward from the date the employee’s first FMLA leave begins. The employee’s next FMLA leave year would begin the first time FMLA leave is taken after completion of the previous twelve (12) month period.

For example, if an eligible employee’s first request for FMLA leave is on October 1, 2014, for leave to begin on November 1, 2014, the twelve (12) month period begins on November 1, 2014. That employee would be entitled to use twelve (12) weeks of FMLA leave between November 1, 2014 and October 31,

2015. If that employee uses twelve (12) weeks between November 1, 2014 and February 1, 2015, they would not be eligible again until November 1, 2015. If they next use FMLA beginning April 1, 2016, their next twelve (12) month period would run from April 1, 2016 through March 31, 2017. For purposes of military caregiver leave, the twelve (12) month period will always begin on the first day leave is taken.

6.2 Both Spouses Employed by the College – If both spouses work for the College, they may only take a combined total of twelve (12) workweeks of FMLA leave in the twelve (12) month period for the purpose of taking leave for the birth of a child or to care for the child after birth, for placement of a child with the employee for adoption or foster care or to care for the child after placement, or to care for the employee’s parent with a serious health condition. If either spouse uses a portion of the twelve (12) workweek entitlement for the above reasons, they would still have their remaining entitlement for other FMLA purposes. Additionally, spouses may be limited to a combined total of twenty-six (26) workweeks during the single twelve (12) month period if used for servicemember leave or a combination of servicemember family leave and leave to care for a child or parent.

6.3 Accounting for Leave – Use of leave will normally be accounted for on an hourly basis.

For example, a full-time employee scheduled to work eight (8) hours a day, five (5) days a week, would be entitled to 480 hours of FMLA leave during the twelve (12) month period.

For employees who work less than a full-time schedule, the amount of leave will be determined on a pro-rata basis and will be determined based on the employee’s status at the time of the request for leave.

For example, an employee working on a .75 FTE basis, would be entitled to twelve (12) weeks or 360 hours of FMLA leave in each twelve (12) month period.

## **7.0 Additional Leave for Disability Related to Pregnancy and Child Care**

7.1 FMLA Leave for Expectant Mother’s Incapacity Due to Pregnancy, Prenatal Care, and Birth – An expectant mother may take FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of a child. The expectant mother may take FMLA leave for incapacity due to pregnancy even if she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three (3) consecutive calendar days. A spouse may take FMLA leave if needed to care for a pregnant spouse who is incapacitated, or if needed to care for the pregnant spouse during prenatal care, or following the birth of a child if due to a serious health condition.

7.2 Additional Leave for Disability Related to Pregnancy and Child Care – Pursuant to the Washington Family Leave Act, RCW 49.78.390, leave provided for the birth and care of a child or for placement for adoption or foster care shall be in addition to any leave used by the mother for sickness or temporary disability because of pregnancy or childbirth.

Therefore, if the mother has a disability relating to her pregnancy or childbirth and takes time off due to that disability, she is still entitled to the full twelve (12) weeks to be used for other Washington Family Leave Act and FMLA qualifying purposes assuming she is eligible and has not already used those twelve (12) weeks. However, if she uses the twelve (12) workweeks of leave for her pregnancy related illness and then wants to use twelve (12) more for her own illness or for some other reason other than childbirth, adoption, or foster care, she would not have any FMLA leave available until her next FMLA year. Leave taken under the Washington Family Leave Act runs concurrently with any leave taken under the FMLA.

## **8.0 Intermittent Leave or Reduced Leave Schedule**

- 8.1 Intermittent leave or leave on a reduced schedule will be granted if medically necessary for an eligible employee's own serious health condition, or to care for a family member with a serious health condition (including a covered servicemember). Intermittent leave may also be taken for military exigency leave.
- 8.2 If an employee requests intermittent leave or leave on a reduced schedule for the employee's own serious health condition or to care for a family member with a serious health condition (including a covered servicemember), a medical certification must be completed. In addition, medical certification may need to be recertified periodically to establish ongoing need, reverification of a condition, or to communicate other changes in prognosis.
- 8.3 Employees requesting intermittent leave or leave on a reduced schedule for foreseeable medical treatment must work with their department and make a reasonable effort to schedule the leave, subject to the approval of the health care provider, so as not to unduly disrupt the department's or the College's operations.
- 8.4 The College may choose to grant leave on an intermittent basis for bonding with a newborn child or a foster or adopted child. Granting of intermittent leave for this purpose is discretionary and will be determined on a case-by-case basis. If such leave is granted, the employee and the College must mutually agree to the schedule to be worked before the employee may take the intermittent leave.
- 8.5 The College may temporarily transfer an employee using intermittent leave for planned medical treatment, including during a period of recovery from one's own serious health condition, to an alternate position for which the employee is qualified, with equivalent pay and benefits if the alternate position would better accommodate the intermittent schedule.

## **9.0 Returning to Work**

- 9.1 Upon returning to work after the employee's own FMLA qualifying illness, the employee will be required to provide a fitness for duty certificate from his or her health care provider. The fitness for duty certificate must be job related and consistent with business necessity. A fitness for duty certificate will not be required for intermittent leave usage unless there are safety concerns regarding the employee's ability to perform their duties based on the serious health condition.
- 9.2 Any employee taking FMLA leave will be returned to the same position or to an equivalent position with the same benefits, and conditions of employment as if the employee had been continuously employed during the leave period.
- 9.3 An employee returning from FMLA leave has no greater entitlement to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave period.

## **10.0 Employee Request for Leave and Employer Designation**

- 10.1 It is the employee's responsibility to notify their supervisor and the HR Office of their need for leave. The employee will provide not less than thirty (30) days' notice before the FMLA leave is to begin. If the need for the leave is unforeseeable thirty (30) days in advance, then the employee will provide such notice as soon as practicable. The notification should include reasons for leave, anticipated dates, and duration of the leave.
- 10.2 Upon being notified, or receiving knowledge that leave is being requested or has been taken for an FMLA qualifying reason, the HR Office will determine eligibility and notify the employee of the employee's rights and responsibilities within five (5) business days, absent extenuating circumstances. The HR Office may request appropriate certification to support the request for leave, including for military family leave. The employee will be required to return any medical certification forms to the HR Office within fifteen (15) calendar days (absent extenuating circumstances) after the employee receives them.
- 10.3 After receipt of complete and sufficient information to allow the HR Office to determine that leave is FMLA qualifying, the HR Office will notify the employee within five (5) business days (absent extenuating circumstances) of either:
  - 10.3.1 Approval of leave and whether the leave will be designated as FMLA; or
  - 10.3.2 Denial of leave and the reason for the denial (i.e., employee's leave request does not qualify under the FMLA, or employee has exhausted their FMLA leave entitlement for the applicable twelve (12) month period, etc.)
- 10.4 FMLA can also be designated retroactively unless the employee suffers injury or harm as a result of the retroactive designation, or if the employee and the employer agree.
- 10.5 FMLA designation is the sole responsibility of the College and is not contingent on an employee requesting an FMLA leave of absence.
- 10.6 While on leave, employees are required to check in with the HR Office every thirty (30) days to provide a status and intended date of return to work.

## **11.0 Medical Certification**

- 11.1 Medical certification will be required for any request for use of leave for an employee's own serious health condition, to care for a family member with a serious health condition, or to care for a covered servicemember with a serious injury or illness. Certification may be required for any request for military exigency leave. When the College receives an FMLA request or is notified of a qualifying FMLA event, the employee will be asked to provide a complete medical certification within fifteen (15) calendar days of receipt and return it to the HR Office. An extension may be provided based on a reasonable explanation for the delay (i.e., reasons outside of the employee's control, such as unavailability of treating physician, etc.)
- 11.2 To ensure a timely and accurate assessment of an FMLA leave request, the medical certification and/or certification of serious injury or illness for covered servicemembers family leave or exigency leave must be completed, and all applicable information provided must be filled out by a health care provider and/or the United States Department of Defense health care provider (i.e., Veterans Affairs, DOD TRICARE network authorized, or a DOD non-network TRICARE authorized private health care provider) and be forwarded to the HR Office. These forms are available in the HR Office or online.

- 11.3 If the HR Office has questions regarding the medical certification, it may be returned to the employee with direction to have the health care provider clarify the information provided or, with release from the employee, the HR Office may contact the employee's health care provider to clarify the original certificate. The HR Office may also contact the employee's health care provider to authenticate (confirm signature on) the medical certificate. The HR Office will follow applicable regulations regarding any contact with an employee's health care provider.
- 11.4 If the HR Office has reason to question the medical certification when leave is taken for the employee's own serious health condition or to care for a family member with a serious health condition (excluding a covered servicemember), it may elect to seek a second opinion from a health care provider of their choosing at the College's expense. If the second opinion conflicts with the first opinion, a third opinion may be obtained at the College's expense from a health care provider mutually chosen by the employee and the College. The third opinion will be controlling. The employee will be considered provisionally entitled to leave pending the second and/or third opinion.
- 11.5 Additional certification may be required every thirty (30) days except where intermittent leave is taken. Re-certifications are provided at the employee's expense.

## **12.0 Substitution of Paid Leave/Concurrent Leave**

CBC employees will be required to exhaust all paid leave prior to using any leave without pay, except for FMLA leave for a compensable work-related injury or illness. However, use of sick leave shall only be allowed under situations where sick leave would normally be allowed pursuant to state laws and College policy. Compensatory time earned, pursuant to the Fair Labor Standards Act, will not be counted toward the FMLA entitlement (although an employee is allowed to use compensatory time for an FMLA qualifying event).

The use of any leave, paid or unpaid (excluding leave for work-related illness or injury covered by workers' compensation and compensatory time), for an FMLA qualifying event will run concurrently with, and not in addition to, the use of FMLA for that event. Leave without pay for an absence covered by worker's compensation will also run concurrently with FMLA.

## **13.0 Confidentiality**

All information requested and provided regarding FMLA applications or designations will be kept in a confidential file, separate from the employee's personnel file.

## **14.0 Interaction with Laws and Regulations**

This procedure will be construed in accordance with the FMLA and its accompanying regulations as currently written or as hereafter amended. To the extent items or aspects of the FMLA or its accompanying regulations are not covered in this procedure or are, or become, inconsistent with this procedure, those gaps or inconsistencies will be construed in accordance with the FMLA and its regulations.