I. Basic Regulations and Conditions of Family and Medical Leave Act (FMLA)

A. A summary of employee rights and responsibilities under FMLA is set forth in the notice that appears at the end of this Policy No. 304. Generally, eligible employees are allowed to take twelve (12) weeks of family and medical leave in the 12-month period measured forward from the date of your first FMLA leave usage. FMLA leave is a combination of paid accrued leave and unpaid leave totaling no more than twelve (12) weeks during the 12-month period measured forward from the date of your first FMLA leave usage. There are exceptions to the general leave rules for eligible employees whose spouse, son, daughter or parent is on covered active duty or call to cover active duty status. There are additional leave entitlements for eligible employees to take up to 26 weeks of leave to care for a covered service member.

B. The College shall require medical certification to support the request for FMLA leave for an employee’s own serious health condition or to take care of a seriously ill child, spouse or parent (Policy No. 303, I.).

C. Leave shall be allowed on an intermittent or reduced leave schedule if medically necessary for an employee’s illness or the employee’s need to provide care for a spouse, child or parent.

D. Leave to care for the employee’s child after birth or receipt of an adopted infant or an infant placed in an employee’s home for foster care shall be taken consecutively within the first twelve (12) months following childbirth or placement. Spouses (husband/wife) who are both employed by New Mexico Junior College shall be entitled to a total of twelve (12) weeks of leave rather than twelve (12) weeks each for the birth or adoption of a child or the care of a sick parent.

E. NMJC requires that the FMLA leave run concurrently with paid vacation, personal and sick leave with pay for any qualifying condition.
II. Definition: 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 the qualified family member from participating in school or other daily activities, all as defined in the governing regulations. A “spouse” means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized.

III. Eligibility: Individuals who have been employed at New Mexico Junior College for a total of 12 months and have worked for at least 1,250 hours over the previous 12 months shall be eligible for leave under the FMLA.

IV. Medical and other Certifications

A. Employees shall give the appropriate supervisor as much notice as possible of the upcoming leave in order to limit the disruption of College operations. The leave shall be denied if requirements are not met.

B. Employees shall provide medical certification from the health care provider to support a request for leave because of a health condition, and shall provide a fitness for duty report to return to work.

C. Employees will be required to provide a medical certification if the leave request is:
   1. for the employee's own serious health condition,
   2. to care for a family member's serious health condition, or
   3. military caregiver leave.

Failure to provide the requested certification in a timely manner may result in denial of the leave until it is provided. If an employee refuses to provide a certification, his/her leave request may be denied and the employee may be disciplined.

New Mexico Junior College, at its expense, may require a medical examination by a health care provider of its own choosing if it has a reasonable question regarding the medical certification provided by the employee. In lieu of a second opinion, New Mexico Junior College may contact the health care provider directly to clarify or authenticate a
medical certification, including certifications for military caregiver leave. Second opinions may not be required for military caregiver leave.

Separate certification may also be required regarding the nature of the family member's military service and/or the existence of a qualifying exigency.”

In the case of certification for intermittent leave or leave on a reduced leave schedule for planned medical treatment, the dates shall be stated as to when treatment is expected to be given and the duration of such treatment.

V. Benefits

A. New Mexico Junior College shall continue to contribute the employer portion of the applicable health, dental, vision, long-term disability and basic life insurance premiums during the family leave. The employee shall pay the employee’s portion of the applicable health, dental, vision, long-term disability premiums and one hundred (100) percent of voluntary life premiums on a timely basis in order to continue coverage.

B. If an employee elects not to return to work upon completion of an approved unpaid leave of absence, the College shall recover from the employee the cost of any payments made to maintain the employee’s coverage, unless failure to return to work was for reasons beyond the employee’s control. Benefit entitlement based upon length of service shall be calculated as of the last paid workday prior to the start of the unpaid leave of absence.

VI. Procedures: A request for family and medical leave shall be originated by the employee. However, if the College determines that a condition qualifies as FMLA leave, the employee shall be given proper notice of the intent to begin the FMLA leave concurrent with another leave. An employee request for FMLA leave shall be either verbal and/or in writing, acknowledged by the immediate supervisor, and approved by Human Resources, the appropriate Vice President and the President. If possible, the request shall be submitted thirty (30)
days in advance of the effective date of the leave. Medical emergencies may determine the request cannot meet the desired calendar.

The FMLA Notice of Eligibility and Rights & Responsibilities form and the Designation Notice form will be sent to the employee.

VII. **Return from Leave.** Upon return from leave, the employee will be restored to his/her original or an equivalent position. An employee who fails to return at the end of FMLA leave will in most cases be considered to have voluntarily resigned his/her position with New Mexico Junior College. Employees who do not return to work at the end of their leave will be terminated unless they are entitled to additional leave as a reasonable accommodation under the Americans with Disabilities Act.
EMPLOYEE RIGHTS AND RESPONSIBILITIES
UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement
FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

• for incapacity due to pregnancy, prenatal medical care or childbirth;
• to care for the employee’s spouse, son, daughter or parent, who has a serious health condition; or
• for a serious health condition that makes the employee unable to perform the employee’s job.

Military Family Leave Entitlements
Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for child care, medical care, counseling, addressing certain financial and legal arrangements, attending counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to 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 (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 a patient status, or is otherwise on the temporary disability retired list for a serious injury or illness, or (2) a veteran 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, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

*The FMLA definitions of “serious injury or illness” for current service members and veterans are distinct from the FMLA definition of “serious health condition”.

Benefits and Protections
During FMLA leave, the employer must maintain the employee’s health coverage under any “group health plan” on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee’s leave.

Eligibility Requirements
Employees are eligible if they have worked for a covered employer for at least 12 months and have 1,250 hours of service in the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

*Special hours of service eligibility requirements apply to airline flight crew employees.

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 the 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 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
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 employer’s operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave
Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employee’s normal paid leave policies.

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 employer’s normal call-in procedures.

Employees must provide sufficient information for the employer 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 employer 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 recertifications supporting the need for leave.

Employee Responsibilities
Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are not, the notice must specify any additional information required as well as the employees’ rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee’s leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers
FMLA makes it unlawful for any employer to:

• interfere with, restrain, or deny the exercise of any right provided under FMLA; and
• 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 an employer.

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.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulation 29 C.F.R. § 825.300(a) may require additional disclosures.

For additional information:
1-866-USWAGE (1-866-848-2943)TTY 1-877-889-5627
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U.S. Department of Labor | Wage and Hour Division