



## College Policy 6.03

### Family and Medical Leave Act

Every fiscal year, MCTC will provide up to 12 weeks of job-protected leave to "eligible" employees for certain family and medical reasons consistent with the FMLA, relevant State law, and collective bargaining agreements and plans. MCTC will comply with the State of Minnesota Family and Medical Leave Act Policy as stated below:

#### FAMILY AND MEDICAL LEAVE ACT - STATEWIDE POLICY

### Part 1. Purpose

To provide guidelines to agencies on implementation of the Federal Family Medical Leave Act of 1993 (FMLA).

### Part 2. Policy

Every fiscal year, the State of Minnesota will provide up to 12 weeks of job-protected leave to "eligible" employees for certain family and medical reasons consistent with the FMLA, relevant State law, and collective bargaining agreements and plans.

### Part 3. Definitions

Listed below are the definitions of specific words and phrases as used in the Family Medical Leave Act. These definitions are intended to be used solely in relation to the provisions of the Family Medical Leave Act, and should not be expanded to any other situation. Following each heading is a citation number from the regulations published in 1995.

#### "EMPLOYEE IS NEEDED TO CARE FOR A FAMILY MEMBER" 825.116

This encompasses both physical and psychological care which include situations where:

- A. Because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, nutritional needs or safety; or is unable to transport himself or herself to the doctor.
- B. The employee is needed to provide psychological comfort and reassurance which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.
- C. The employee may be needed to fill in for others who are caring for the family members, or to make arrangements for changes in care, such as transfer to a nursing home.

#### "HEALTH CARE PROVIDER" 825.118

A. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices.

B. Others capable of providing health care services including only:

- 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.
- Nurse practitioners and nurse-midwives who are authorized to practice under State law.
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

- Clinical Social Worker.
- Any health care provider from whom an employer or the employers group health plans benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits, including a foreign physician.

"INCAPABLE OF SELF-CARE" 825.113

Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs).

"IN LOCO PARENTIS" 825.113

Persons who are "in loco parentis" include those 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.

"PARENT" 825.113

A biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does not include parents "in law".

"PHYSICAL OR MENTAL DISABILITY" 825.113

A physical or mental impairment that substantially limits one or more of the major life activities of an individual.

"SERIOUS HEALTH CONDITION" 825.114

For purposes of the FMLA, serious health condition means an illness, injury, impairment, or physical or mental condition that involves:

A. Inpatient care, i.e., an overnight stay, in a hospital, hospice, or residential care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

B. Continuing treatment by a health care provider that involves:

1. A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days; and
2. Any subsequent treatment or period of incapacity relating to the same condition, that also involves:
  - Treatment two or more times by a health care provider, by a nurse or physicians assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under order of, or on referral by, a health care provider; or
  - One treatment session by a physician which results in a regimen of continuing treatment by a health care provider, or at least under the supervision of the health care provider; or

C. Pregnancy. Any period of incapacity due to pregnancy, or for prenatal care. This absence qualifies for FMLA leave even though the employee does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days; or

D. Chronic serious health condition. Any period of incapacity or treatment for such incapacity due to a chronic serious health care condition. This absence qualifies for FMLA leave even though the employee or immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. Chronic serious health condition is defined as one which:

1. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider; and

2. Continues over an extended period of time; and
3. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.); or

E. Permanent or long term condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider, e.g., Alzheimer's, a severe stroke, or the terminal stages of a disease; or

F. Multiple treatments by a health care provider or a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention such as cancer (radiation, chemotherapy, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

Specific Exclusions. Routine physical, eye, or dental examinations, cosmetic treatments, cold, flu, and earaches are excluded.

Specific Inclusions. The following conditions are included in the definition of serious health condition:

A. Mental illness resulting from stress or allergies; and

B. Substance abuse if the conditions of the FMLA rules are met. Leave may only be taken for treatment of substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Absence due to an employee's use of the substance does not qualify for FMLA leave.

"SON" OR "DAUGHTER" 825.113

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 18, or age 18 or older and "incapable of self-care" because of a mental or physical disability.

"SPOUSE" 825.113

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.

"UNABLE TO PERFORM THE FUNCTIONS OF THE POSITION OF THE EMPLOYEE" 825.115

Where the health care provider finds that the employee is unable to work at all or is unable to perform any of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act.

## **Part 4. Procedures and Responsibilities**

Eligibility

A. Employee Eligibility

1. The employee must have worked for the State of Minnesota for at least one year; and
2. The employee must have worked at least 1,250 hours during the 12 months immediately preceding the request. The Fair Labor Standards Act requires employers to count hours of work only, not paid hours such as vacation, holidays, sick pay, unpaid leave of any kind, or periods of layoff.

B. Reasons For Taking a Qualifying Leave

1. For the birth of the employee's child, and to care for such child.
2. For the placement with an employee of a child for adoption or foster care.
3. To care for the employee's seriously ill spouse, son or daughter, or parent.

4. Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of an employee's job.
5. Circumstances may require that leave for the birth of a child, or for placement for adoption or foster care, be taken prior to actual birth or placement.

#### C. Medical Certification

1. Where FMLA qualifying leave is foreseeable and 30 days notice has been provided, an employee must provide a medical certification before leave begins.
2. Where FMLA qualifying leave is not foreseeable, an employee must provide notice to the Employer of the need for leave as soon as practicable (1 or 2 working days is expected except in extraordinary circumstances). The employee must then provide medical certification within a reasonable timeframe established by the Employer.
3. An Appointing Authority may require medical certification to support a FMLA qualifying leave request either to care for an employee's seriously ill family member, or for leave due to a serious health condition that makes the employee unable to perform the functions of his or her job.
4. The Appointing Authority may require a fitness for duty report upon the employees' return.

## Part 5. Designating Leave

1. An employer may make a preliminary designation of leave as FMLA qualifying if medical certification was not provided prior to the beginning of leave, or if the employer is waiting for a second or third medical opinion.
2. Where an employer has knowledge that an employee's leave qualifies as FMLA leave and does not designate the leave as such, the employer may not designate leave retroactively as FMLA leave unless:
  - The employee has been out of work and the employer does not learn of the reason for the leave until after the employee returns (in which case the employer must designate the leave upon the employee's return to work); or
  - The employer has provisionally designated leave as FMLA leave and awaits receipt of a medical certification or other reasonable documentation.
  - If the employee gives notice of the reason of the leave later than two days after returning to work, the employee is not entitled to the protections of the FMLA.

## Part 6. Coordination With Collective Bargaining Agreements/Plans

A. FMLA qualifying leaves of absence will be identified as those authorized under collective bargaining agreements or plans, i.e., disability leave or personal leave, dependent on which leave is appropriate.

B. The FMLA provides for an unpaid leave under certain circumstances. The employer shall require an employee to use sick leave for situations required by the collective bargaining agreements. The employer shall only require an employee to use vacation and/or compensatory time in specific instances allowed by the collective bargaining agreements. However, the employee may request and the employer shall grant vacation or compensatory time. All paid leave time counts toward the twelve (12) weeks of FMLA qualifying leave.

## Part 7. Job Benefits and Protection

A. During an FMLA qualifying leave, the employee and dependent health and dental insurance is maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the entire leave period.

B. An eligible employee returning from a FMLA qualifying leave is entitled to be restored to the same position and shift that the employee held when the FMLA qualifying leave began, or to an equivalent position and shift with equivalent benefits, pay, and other terms and conditions of employment.

C. Provided the employee returns to work immediately following his/her FMLA qualifying leave (i.e., does not follow the FMLA qualifying leave with additional unpaid leave), benefits must be resumed upon the employee's return to work at the same level as were provided when leave began. Any new or additional coverage or changes in health benefits must be made available to an employee while on FMLA qualifying leave.

## Part 8. General Provisions

### A. Recordkeeping

1. FMLA provides that the Appointing Authority shall make, keep, and preserve records pertaining to the obligations under the Act.
2. The records must disclose the following:
  1. Basic payroll data - name; address; occupation; rate of pay; hours worked per pay period; additions and deductions from wages; total compensation paid.
  2. Dates FMLA qualifying leave is taken.
  3. If FMLA qualifying leave is taken in increments of less than one full day, the number of hours taken.
  4. Copies of employee notices of leave provided to the employer; copies of all general and specific notices given to employees by the employer.
  5. Any documents describing employee benefits or employer policies or practices regarding taking of paid or unpaid leave.
  6. Records of any disputes between the employer and employee regarding designation of FMLA qualifying leave.
  7. Records and documents relating to medical certifications or medical histories of employees or employees' family members, shall be maintained in separate confidential files.
  8. Premium payments for employee benefits.

## Part 9. Posting Requirements

1. Appointing Authorities must post a notice describing the Act's provisions. The notice must be posted in all areas where employees would normally expect to find official notices.
2. If an Appointing Authority publishes and distributes an employee handbook, information on employee entitlements and obligations under the FMLA must be included.
3. If the Appointing Authority does not publish or distribute a handbook, it must provide written guidance to employees when they request a FMLA qualifying leave.

### Employer's Response to the Employee's Request for FMLA Leave

When an employee requests FMLA qualifying leave, the employer must provide the employee with the following:

1. Notice describing the employee's obligations and explaining the consequences of a failure to meet the obligations.
2. The leave will be counted against the employee's twelve weeks of FMLA leave.
3. Medical certification requirements.
4. Employee's right to use paid leave and whether the employer requires the substitution of paid leaves.
5. Requirements concerning payment of health insurance premiums.
6. The employee's potential liability for payment of health insurance premiums paid by the employer during FMLA leave if the employee fails to return to work for at least thirty (30) calendar days after taking the leave.
7. Requirements for a fitness-for-duty certificate for the employee to be restored to employment.
8. The employee's rights to restoration to the same or an equivalent job upon return from FMLA leave.

## Part 10. Appeal Process

If an employee believes that their rights under the FMLA have been violated, he/she may:

### Subpart A. Internal

1. Contact your Human Resources office, or;
2. Contact your Labor Union/Association.

## **Subpart B. External**

1. File or have another person file on his/her behalf, a complaint with the Secretary of Labor.
2. The complaint may be filed in person, by mail or by telephone, with the Wage and Hour Division, Employment Standards Administration, U. S. Department of Labor. The complaint may be filed at any local office of the Wage and Hour Division; the address may be found in telephone directories.
3. A complaint filed with the Secretary of Labor should be filed within a reasonable time of when the employee discovers that his/her FMLA rights have been violated, but in no event more than two (2) years from the date the alleged violation occurred, or three (3) years for a willful violation. No particular form is required to make a complaint, however the complaint must be reduced to writing and include a statement detailing the facts of the alleged violation.
4. File a private lawsuit pursuant to section 107 of the FMLA.

**Date of Adoption:** 7/1/1999

**Date of Implementation (if different from adoption date):**

**Date of Last Review:** 7/1/1999

**Date and Subject of Revisions:**