

**MAINE COMMUNITY COLLEGE SYSTEM
PROCEDURES MANUAL**

**PERSONNEL AND EMPLOYEE RELATIONS
Section 415.1**

SUBJECT: FAMILY AND MEDICAL LEAVE ACT

PURPOSE: To integrate the provisions and entitlement of State and Federal Family and Medical Leave Laws with the family and medical leave benefits available to MCCS employees by collective bargaining agreement, MCCS Policy, and other authorities.

A. GENERAL

1. Covered Leave

The MCCS will grant an eligible employee unpaid leave for up to 12 work weeks during a 12-month period, if this procedure is followed and leave is requested for any of the following reasons:

- a. The birth or adoption of a child, or the foster care placement of a child;
- b. To care for a “family member” of the employee if that individual has a serious health condition; or
- c. A serious health condition of the employee that renders the employee unable to perform his or her job functions.

Employees are limited to a maximum of 12 weeks unpaid leave for any of these purposes; an employee cannot take 12 weeks parental leave and 12 weeks sick leave during the same 12-month period. If the leave is for birth, adoption, or foster care placement, the leave must be completed within 12 months of the date of birth or placement.

2. The 12-Month Period

Available leave will be calculated by determining the amount of leave used by an employee for the 12 months prior to each day for which leave is requested and subtracting that number from the total of days equal to 12 workweeks. This referred to as the “rolling” method of calculation. Employees will be advised when requesting leave of the amount of FMLA leave they have available.

3. Spousal Exception

If a husband and wife both work for the MCCS, and are eligible for leave, they are only entitled to a combined 12 work weeks of leave taken for birth, adoption, foster care, and to care for a parent. The 12 weeks will be calculated in the same manner as leave for an individual employee.

4. State Law

MCCS employees are covered by state leave laws that are different than the federal FMLA. The MCCS will comply with both laws. Leave under state law will run concurrently with leave under this policy.

5. Intermittent Leave

An employee taking leave for personal illness or to care for a sick family member need not take such leave continuously and may take it on an intermittent basis, or by reducing the employee's scheduled work hours, if the employee provides certification from the health care provider caring for the employee and/or family member that leave must be taken in that manner. If leave is not taken continuously, it will be deducted from the employee's entitlement to leave, i.e. 12 weeks during a 12-month period.

6. Part-time After Birth, Adoption, or Foster Care Placement

Requests for intermittent or reduced schedule (part-time leave after the birth, adoption, or foster care placement of a child) will be considered on a case-by-case basis. The request should be made to the College President. As a general rule, part-time arrangements or intermittent leave will be granted:

- ◆For a maximum of twelve months after birth, adoption or foster care;
- ◆For leaves in increments of four hours or one day (such as five four-hour days or three eight-hour days);
- ◆Subject to the availability of the employee's supervisor to ensure that work is completed through scheduling change or job-sharing; and
- ◆Subject to the employee's consent to alter schedule or work longer hours on an emergency basis, such as when other employees are out sick.
- ◆The MCCS reserves the right to refuse leave, or to cancel any such arrangement on 30 days' notice, if the MCCS concludes that the needs of the business require the employee's presence on a full-time basis.

B. DEFINITIONS

1. “Family Member”

“Family Member” is defined in FMLA and this procedure to include the employee’s spouse, son, daughter or parent (but not a parent “in-law”). A “son” or “daughter” is any child under 18 who is the biological child of the employee, who is adopted by the employee, or whom the employee supervises on a day to day basis and for whom the employee is financially responsible. A “son” or “daughter” is also a child over 18 who is incapable of self-care because of a mental or physical disability. A parent is any individual who assumed day to day and financial responsibility for the employee when the employee was a child.

The MCCS will not permit leave under this procedure to care for individuals who are not “family members.”

2. “Serious Health Condition”

“Serious Health Condition” is defined as an illness, injury, impairment, or physical or mental condition that involves a period of incapacity or treatment following in-patient care in a hospital, hospice, or residential medical care facility; a period of incapacity requiring more than three days’ absence from work and continuing treatment by a health care provider; or continuing treatment by a health care provider for a chronic or long-term health condition that is so serious that, if not treated would likely result in incapacity of more than three days’ continuing treatment by or under the supervision of a health care provider of a chronic or long-term condition or disability that is incurable; or pre-natal care.

3. “Health Care Provider”

A “health care provider” is any doctor of medicine or osteopathy, podiatrist, optometrist, nurse practitioner, or nurse midwife performing within the scope of their practice as defined under state law. Christian Science practitioners and Chiropractors are health care providers to the extent defined under regulations issued by the U.S. Department of Labor.

C. ELIGIBILITY

1. Minimum Eligibility Requirements

An employee is eligible if the employee has been employed for at least 12 months (or 52 weeks) by the MCCS, and has worked at least 1,250 hours during the 12-month period prior to the time leave would begin under this procedure. The MCCS will make the determination at the time of the leave request.

Hours are calculated based upon actual hours that the employee worked, including overtime. The MCCS will use its records of hours worked for all hourly employees. In the case of exempt employees, the MCCS will assume that any employee employed full-

time for seven and one-half months meets the 1,250 hours requirement. Exempt employees who have 12 months' prior service, but less than seven and one-half month's full-time continuous service at the time leave is requested, should include documentation of hours worked with their request.

2. Leave for Serious Health Conditions

Employees should recognize that this procedure and FMLA are only intended to cover serious health conditions – generally those which involve four or more days of incapacity from work or school and include treatment by a physician, or chronic, long-term, incurable conditions. Employees who wish to take leave to care for family members with non-serious health conditions are not covered by this procedure. The granting of unpaid leave for non-serious health conditions is governed by applicable collective bargaining unit agreements or applicable M CCS Policy.

D. PROCEDURES FOR REQUESTING LEAVE

1. Requests for Leave

a. Procedure

All requests for family or medical leave should be made through the supervisor to the Business Office. That Office will provide additional notices and forms. In all cases, employees will be asked to complete the "Request for Family or Medical Leave."

b. Foreseeable Leaves

If the need for family or medical leave is foreseeable, an employee must provide notice to the M CCS of not less than 30 days. Leave will be denied unless there is a reasonable excuse for the delay. If leave is denied for lack of notice, the employee may designate leave to start 30 days after notice is given.

Failure to report to work when FMLA leave has been denied will be treated as an unexcused absence under the M CCS policy and collective bargaining agreements. Employees will not be paid for any missed days or permitted to substitute paid leave, and will be subject to discipline.

c. Scheduling

If the leave is for planned medical treatment of the employee or a family member, or requires intermittent or reduced schedule leave, employees may be required by their supervisor to arrange a particular schedule or to reschedule appointments or treatments, subject to the consent of the health care provider.

d. Unforeseeable Leaves

If the need for family or medical leave is not foreseeable, notice must be given by the employee as soon as possible and practicable. Employees are expected to promptly notify their supervisor as soon as they learn of the need for leave. If the employee's supervisor is unavailable, contact the Business Office. Except in the case of extreme medical emergencies, employees are expected to call to advise their supervisor as soon as they know of the need for and expected duration of leave. In emergencies, the employee or a family member should contact the employer and give the same information by telephone, or by leaving a message at the Business Office and a number where they can be reached. Requests for leave should then be submitted in writing as soon as practicable. Absent good cause or medical emergencies, written request for leave should be submitted within three (3) business days after oral request is made.

2. Proof

a. Medical Certification

The M CCS may require proof of necessity for family or medical leave by a health care provider on forms provided by the M CCS. The information required shall include:

- ◆ The date on which the serious health condition commenced;
- ◆ The probable duration of the condition;
- ◆ Appropriate sufficient medical facts within the knowledge of the health care provider that would entitle the employee to take family or medical leave;
- ◆ An estimate of the amount of time that the employee is needed to care for a family member, or a statement that the employee is unable to perform the functions of the position of the employee; and
- ◆ In cases of medical leave, an explanation of the extent to which the employee is unable to perform the functions of the position of the employee; and

Certifications must be submitted within 15 days of the date requested by the M CCS.

b. Second Opinions

The M CCS has the option of requiring the employee to get a second opinion from an independent medical provider selected by the M CCS. The M CCS will pay for the second opinion. If the two opinions conflict, the conflict may be resolved by a third opinion by a provider agreed to by

the M CCS and the employee which shall be considered final and binding. The M CCS will pay for the third opinion.

3. Leave is Contingent on Eligibility

All employee requests for FMLA leave are contingent upon a determination by the M CCS that the employee is eligible for FMLA leave. This includes a determination of eligibility and provision of medical certification. Leave is also contingent on any second or third opinions that may be required. Because these procedures may take time, it is possible that a final determination may not be made until after the employee is on leave or has returned to work.

4. Transfer to Alternative Position

In all cases of intermittent and reduced schedule leaves, including part-time work after birth or adoption, the M CCS reserves the right to require the employee to transfer to another position that better accommodates the employee's need for leave and/or the M CCS; operations. This decision is the sole discretion of the M CCS.

The M CCS also reserves the right to transfer an employee to another position whenever an employee's use of leave for one or more qualifying reasons is so frequent and intermittent that it is impossible to predict and schedule for coverage.

5. Confidentiality

The M CCS will keep confidential all information relating to requests for family or medical leave. This information will be used only to make decisions in regard to the provisions of this procedure. Supervisors must submit all records to the Business Office and should not retain any copies in their files. The M CCS will follow confidentiality requirements of the Americans with Disabilities Act for all FMLA-related information.

E. SUBSTITUTION OF SICK LEAVE, COMPENSATORY TIME, AND VACATION LEAVE

1. Substitution Options

Employees are required to use any accrued, sick leave for any part of leave taken under this procedure. Faculty members are required to take one day of sick leave for each day they are absent when the college is in operation. The period of paid leave will be deducted from the amount of unpaid leave time available under this procedure. Employees may also choose to substitute any accrued, earned vacation, compensatory or personal leave for any part of leave taken under this procedure. In determining whether leave has been accrued or earned, the M CCS will apply the provisions of respective collective bargaining agreements and M CCS policies, including any restrictions.

2. Unpaid Leave

Salaried employees who do not have accrued, paid leave will have their pay docked on a pro-rata basis if they take FMLA-qualifying unpaid leave.

F. RELATED LEAVE BENEFITS

In certain instances, MCCS policies and collective bargaining agreements provide MCCS employees with additional related leave benefits. FMLA-eligible leave will run concurrently with related leave benefits provided under MCCS policy or collective bargaining agreement. Leave which is not available under FMLA will be governed by the applicable policy or collective bargaining agreement.

G. BENEFITS

1. Health and Dental Benefits

During the leave, the MCCS will maintain the employee's coverage for health and dental benefits as follows. The employee is required to continue to pay employee's portion of any health and dental insurance premiums normally deducted from employee's paycheck and shall pay such amount to the Business Office on a monthly basis, no later than the 15th of each month. If the employee fails to make the required payments for health and dental coverage within 30 days of the date that such payments are due, health and dental coverage will be discontinued.

All amounts due the MCCS because of un-reimbursed health and dental benefits provided during leave will be deducted from the employee's pay upon return.

2. Employment Conditions

- a. The employee shall not accrue vacation and sick leave while on unpaid leave. Time spent on unpaid leave will not count as service needed to advance the vacation accrual rate.
- b. Time on unpaid leave must be credited to longevity service and seniority for all authorized leaves.
- c. The Performance Review Date (anniversary date for step increases) must not be changed as the result of an unpaid leave. Decisions to grant or deny merit step increases must be made on a case-by-case basis, in accordance with the amount of lost work time.
- d. Time on FMLA-qualifying unpaid leave must advance the employee's end of probation date.

3. Other Benefits

Other benefits normally provided to an employee shall be provided to the employee only if permitted by the plan document governing the provision of benefits, in accordance with the provisions of the written document, and if the employee makes any required payments. In the case of benefits requiring payments, it is the responsibility of the employee to make appropriate arrangements for payment of the benefit.

In accordance with existing M CCS policies and collective bargaining agreements governing unpaid leave, employees will not earn any vacation pay, sick leave, or personal leave while on unpaid FMLA leave. Employees on an intermittent or reduced-schedule leave will earn vacation or other leave at the same rate as part-time employees working similar schedules.

4. Reinstatement

The M CCS has the right, upon the employee's return from leave, to refuse to reinstate any benefit or condition of employment that has been discontinued for M CCS employees.

H. REINSTATEMENT

1. General

An employee taking leave under this procedure will be returned to the employee's same position or to an equivalent position, at the election of the M CCS unless the employee would have been terminated in the absence of any leave (e.g., layoff, downsizing, or termination of a temporary job). Taking of leave will not result in any loss of benefits or conditions of employment accrued prior to the beginning of the leave period except that if the employee is unable to use vacation time because of policy restriction (e.g., the employee returns after the end of the fiscal year), and the leave was not substituted, the M CCS has the option of providing pay in lieu of vacation or setting a new deadline for use of accrued leave. Employees who have health insurance discontinued by failure to make timely payment of their share of the premium cost while on unpaid leave must be restored to full coverage without need for proof of insurability or any other qualification requirement when they return from leave.

2. Fitness-for-Duty Examinations

The M CCS will require a fitness-for-duty certification prior to restoration where there is any question regarding the employee's ability to safely perform the job.

The M CCS reserves the right to make additional medical inquiries and/or require follow-up examinations, at its expense, to ensure that employees can safely perform all the functions of the job. These medical inquiries will be conducted in accordance with the Americans with Disabilities Act.

3. Key Employee Exception

If an employee has gross income that is within the top 10% of the M CCS' employees, the M CCS reserves the right not to restore the employee to his/her prior position with the M CCS if the M CCS will suffer substantial and grievous hardship because of the restoration. At the time that leave is granted under this procedure, the M CCS will inform the employee that the employee is within the top 10% and also explain the possible consequence that restoration may be denied.

If the M CCS determines during the employee's leave that the employee is not to be restored to employment, the employee will be notified immediately by certified mail and given the opportunity to return from leave and be restored to his/her position. If the employee does not return from leave, the employee can petition for reinstatement at the end of the leave period.

4. Periodic Reporting

Employees on leave are required to report bi-weekly on their status and intent to return. During the leave, the M CCS also may require that any employee re-certify the medical condition that caused the employee to take leave.

5. COBRA

When an employee notifies the M CCS that he/she is not returning from leave, the M CCS shall terminate the employee's health benefits and he/she shall no longer have a right to restoration to the same or equivalent position. The employee shall be entitled to continuation of health benefits only in accordance with the Consolidated Omnibus Budget Reconciliation Action ("COBRA") and the provisions of the health plan.

6. Repayment of Premiums

Employees who return to work will meet with the Business Office to work out an appropriate repayment schedule for any employee premiums made by the M CCS during leave.

Upon receiving notice that the employee is not returning to employment with the M CCS, or should the employee simply fail to return, or return to employment for less than thirty days after leave has ended, the employee shall owe the M CCS the cost of any benefits provided during leave, including both the employer and any employee premiums and co-payments for health benefits. No such amount shall be owed if there is a recurrence or onset of a serious health condition or, in the opinion of M CCS, there is a change of circumstances beyond the employee's control. The benefits of a key employee who is not restored shall not be terminated prior to the end of leave and the employee shall not be responsible to the M CCS for such benefits other than the normal employee contribution.

7. Failure to Return to Work

Employees who fail to return to work after FMLA leave shall be treated as having voluntarily terminated their employment. The decision to terminate an employee who fails to return from a leave due to a personal serious health condition must not be made until it has been determined that there is not a reasonable accommodation available to enable the employee to return to work.

I. RECORDS

The Business Office must maintain records of employee leaves under this procedure for a minimum of three years.

J. EMPLOYEE PROTECTION

The MCCS cannot interfere with, restrain or deny the leave rights that are provided to employees by this procedure and the Federal Family and Medical Leave Act, or discriminate against an employee who files a complaint or grievance under this procedure.

Employee grievances that are not resolved by the MCCS or the process delineated in collective bargaining agreements may be submitted to the U.S. Department of Labor and the employee may bring civil action against the MCCS for violations of the Federal Family and Medical Leave Act.

Attachments: [MCCS Certification of Health Care Provider](#)
 [MCCS Employees FMLA Certification Form](#)
 [MCCS Employee Notice](#)
 [US Department of Labor FMLA Poster](#)

REFERENCES: 29 CFR Pt. 825; MCCS Policy 415

DATE ADOPTED: August 5, 1993; March 1, 2004

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