

CCS Administrative Procedure

2.40.01 – A Family Medical Leave and Return to Work

Implementing Board Policy [2.40.01](#)

Contact: Human Resources

1.0 Leave Administration Objective and Responsibilities (summary of Board of Trustees Policy 2.40.01)

Community Colleges of Spokane will provide and administer a program for employee leaves of absence in a manner that will both serve the well-being of faculty and staff and the organization as a whole.

- 1.1 Family Medical Leave Act of 1993 (FMLA) and Family Care Act (FCA or WAC 296) (hereafter and collectively referred to as “FMLA” unless noted otherwise) both allow an eligible employee up to 12 weeks of leave in a 12-month period for a qualifying reason(s). In addition to the leave provided under the FMLA as outlined below, an employee may also be entitled to other leave under state law, Community College of Spokane (CCS) policies or applicable collective bargaining agreements. This policy applies to all eligible employees of CCS.
- 1.2 The Chief Administration Officer is responsible for ensuring leave is administered in good faith and consistent with the rights and responsibilities provided by statute, specifically the Family Medical Leave Act of 1993 (FMLA) and [WAC 357-31](#) and [296-130](#), and for providing information and training specific to these rights and responsibilities.
- 1.3 Managers are responsible for managing their staff’s leaves and keeping both the employee and the Human Resources Office informed of changes in status, rights and need for information. Additionally, managers are responsible for ensuring that no employee returns to work without first confirming with the Human Resources Office that appropriate medical release is on file.
- 1.4 Employees are responsible for reporting leaves and providing the notice and information necessary for CCS to effectively administrate this procedure and direct its workforce.
- 1.5 Nothing herein modifies the terms of an applicable collective bargaining agreement.

2.0 Definitions

The following definitions are specific to the terms of this procedure and do not modify or revise similar terms as used in related procedures or collective bargaining agreements.

- 2.1 Family Member: Under this procedure includes children, spouse, parents and grand-parents (inclusive of parent and grandparent-in-law) but not son-in-law or daughter-in-law.
- 2.2 Spouse: 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.

- 2.3 Parent/Grandparent: The biological parent/grandparent or an individual who stands or stood *in loco parentis* to an employee or employee's spouse when the employee/spouse was a child.
- 2.4 Son or daughter: A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.
- 2.5 In loco parentis: 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.
- 2.6 Next of Kin: As defined by the Department of Labor. Applies only to Service Member Family Leave in 3.1.6 below.
- 2.7 Rolling year: A period of twelve calendar months beginning with the qualifying event.
- 2.8 Serious health condition: An illness, injury, impairment, or physical or mental condition that involves either:
- 2.8.1 Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; or
- 2.8.2 Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:
- 2.8.2.1 A health condition (including treatment or recovery) lasting more than five consecutive work days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
- 2.8.2.1.1 Two (2) or more treatments by or under the supervision of a health care provider; or
- 2.8.2.1.2 One treatment by a health care provider with a continuing regimen of treatment.
- 2.8.2.2 Any period of incapacity due to pregnancy, or for prenatal care. (A visit to the health care provider is not necessary for each absence.)
- 2.8.2.3 A chronic serious health condition which continues over an extended period of time, requiring periodic visits to a health care provider, and may involve occasional episodes of incapacity e.g., asthma, diabetes, etc.
- 2.8.2.4 A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment.
- 2.8.2.5 Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than five consecutive work days if not treated (e.g., chemotherapy or radiation treatments for cancer).

- 2.9 Health care provider: one of the following:
- 2.9.1 Doctor of medicine or osteopathy (M.D. or D.O.) authorized to practice medicine or surgery by the state in which the doctor practices.
 - 2.9.2 Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice and performing within the scope of their practice, under state law.
 - 2.9.3 Nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law.
 - 2.9.4 Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.
 - 2.9.5 Any health care provider recognized by the employer or the employer's group health plan.

3.0 General Provisions

- 3.1 CCS will grant up to 12 weeks of leave during a rolling year (beginning with the qualifying event) or 26 workweeks for 3.1.6 below to eligible employees, in accordance with this procedure, for one or more of the following reasons:
- 3.1.1 The birth and care of a newborn child; or
 - 3.1.2 The placement and care of a adopted child or foster child with the eligible employee; or
 - 3.1.3 To care for an employee's family member (spouse, son, daughter, parent or grandparent (inclusive of parent- and grandparent-in-law) with a serious health condition; or
 - 3.1.4 The employee's own serious health condition; or
 - 3.1.5 Because of any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation; or
 - 3.1.6 To care for a covered service member who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.
- 3.2 Entitlement to FMLA leave for the care of a newborn child or newly adopted or foster child ends twelve months from the date of the birth or the placement respectively.

4.0 Eligibility

- 4.1 An eligible employee must meet both of the following conditions:
- 4.1.1 The employee must have been employed by CCS or another Washington state agency or institution of higher education for at least 12 months, need not be consecutive, prior to the commencement of the leave; and
 - 4.1.2 The employee must have worked for at least 1,250 hours of service in the twelve-month period immediately preceding the commencement of the leave.
- 4.2 The 1,250 hours requirement does not count used paid time off (i.e., annual leave, sick leave, personal holiday, compensatory time, or shared leave). The 1,250 hours worked rule can otherwise be described as, "in the seat time".

5.0 Leave Coverage and 12-Month Period

- 5.1 Measuring the 12-Month Period: An eligible employee can take up to 12 workweeks of FMLA leave during a 12-month rolling year period (beginning with the qualifying event and ending 12 months later).
- 5.2 Measuring the 26-Workweek Period: An eligible employee can take up to 26 workweeks of FMLA Service Member Family leave during a 12-month rolling year period (beginning with the qualifying event and ending 12 months later). During the single 12-month period during which Servicemember Family Leave is taken, the employee may only take a combined total of 26 workweeks of leave for Servicemember Family Leave and leave taken for other FMLA qualifying reasons.
- 5.3 Both Spouses Employed by CCS: If a husband and wife both work for CCS, they may only take a combined total of 12 workweeks or 26 workweeks for 3.1.6 above of FMLA leave in the 12-month period for the purpose of the birth and care of a newborn child, adoption of a child, or placement of a child in foster care, or to care for the employee's parent with a serious health condition.
- 5.4 Accounting for Leave: Use of leave will be applied on an hourly, pro rata basis and will be determined based on the employee's status at the time of the request for leave.
- 5.5 Additional Leave for Disability Related to Pregnancy and Child Care: Washington state law, [RCW 49.78.390 \(1\) \(2\)](#) and states:

“(1) Leave under this chapter and leave under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth.

(2) Leave taken under this chapter must be taken concurrently with any leave taken under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6.”

If a prospective mother experiences a disabling condition relating to pregnancy or childbirth, she is entitled to an additional 12 weeks of leave under this RCW. However, leave used for pregnancy related illness would impact the balance available and could make FMLA unavailable until the next FMLA year.

6.0 Employee Request for Leave and Employer Designation

- 6.1 It is the employee's responsibility to notify his or her supervisor per the department's regular call-in procedures of the need for leave. The supervisor, after having been informed of the need, informs the employee to contact HRO for the official notification paperwork, which consist of the Request for Family or Personal Medical Leave and the Medical Certification forms. The Request for Family or Personal Medical Leave is accomplished by the employee completing the form; the request form is fairly self-explanatory for completion purposes. The form must be signed by both the employee and the supervisor or supervisor designee. Once a FMLA request has been made, CCS will determine eligibility and notify the employee of either:

- 6.1.1 Approval of leave and whether the leave will be designated as FMLA, or
 - 6.1.2 Denial of leave and the reason for the denial.
- 6.2 The employee will be notified of the above determination either orally or in writing. If given orally, the determination will be followed up in writing, within five business days, absent extenuating circumstances. If the employee does not provide enough information to determine if the leave qualifies for FMLA, the Director of Human Resource Services will require additional information.
- 6.3 If the need for leave is foreseeable, the employee should notify his or her supervisor at least 30 days in advance of the need for leave. If the need for leave is not foreseeable, notice must be given as soon as possible.
- 6.4 If an employee's or family member's health care provider needs to complete a medical certification form, the certification form needs to be returned within 15 calendar days from the receipt of the form. **The employee must return the medical certification to the Human Resources Office, not to the supervisor.** If the medical certification is not returned, the leave may be denied due to lack of verifiable information.
- 6.4.1 It is the employee's responsibility to ensure the medical certification is returned to the Human Resources Office. If the employee returns the 'Medical Certification' to the supervisor, the supervisor must send the certification directly to the Human Resources Office.
 - 6.4.2 Due to employee and patient privacy laws, the medical certification and all other related medical information, must be returned directly to and maintained in the Human Resources Office.

7.0 Intermittent Leave

- 7.1 CCS seeks to accommodate employees with need for leave while also keeping them productive and orientated to the workplace. As related to FMLA, CCS encourages employees and supervisors to explore the possibility of the following temporary options before granting, or extending, a leave request:
- 7.1.1 An intermittent schedule (i.e. day on, day off).
 - 7.1.2 A reduced hours schedule (i.e. fewer days or hours per week).
 - 7.1.3 A flexible schedule (i.e. adjusted work hours).
 - 7.1.4 A modified duty assignment (i.e. light duty assignments – ex. no lifting over 20 lbs).
 - 7.1.5 Transfer temporarily to a position better suited to need or limitations. An employee will maintain his/her current pay and, the reassignment is noncompetitive and limited to lateral or lower level assignments.
- 7.2 Modified duty assignments can be utilized up to 45 calendar days and can be re-certified for an additional 45 calendar days if necessary. A modified duty assignment cannot extend beyond 90 calendar days. For certain situations, CCS can transfer an employee temporarily, at the employee's current pay, to a position that would accommodate a leave of absence or work restriction that could not be accommodated within their current position. FMLA does not require an employer to promote or create a position as a form of accommodation.

- 7.3 If the need for FMLA is due to the employee's own serious health condition or to care for a family member with a serious health condition, a 'Medical Certification' must be completed even if a leave on an intermittent basis or leave on a reduced schedule is being requested. The 'Medical Certification' may need to be re-certified periodically to establish on-going need, re-verify condition or communicate changes in prognosis.
- 7.4 For foreseeable medical treatment, employees must work with their department to schedule the leave, subject to the approval of the health care provider, so as not to unduly disrupt the department's or CCS' operations; including when the leave will be intermittent or reduced schedule.
- 7.5 CCS encourages, where appropriate, leave on an intermittent basis for the care of 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 CCS must mutually agree to the work schedule and duration. An updated schedule is also encouraged.

Intermittent leave arrangements must serve the mutual convenience of CCS and the employee. Should such arrangement no longer serve the mutual convenience of either party it will be terminated with reasonable notice and a new leave arrangement will be determined.

8.0 Substitution of Paid Leave/Concurrent Leaves

- 8.1 It is the general policy of CCS that FMLA will run concurrently with all other forms of leave. CCS employees may use any combination of paid or unpaid leave to which they are entitled toward the FMLA entitlement. CCS will require an employee to substitute paid sick leave for an otherwise unpaid FMLA leave. The use of any leave, paid or unpaid (excluding compensatory time earned under the Fair Labor Standards Act), for a FMLA qualifying event will run concurrently with, and not in addition to, the use of FMLA for that event. The types of leave that can be substituted for otherwise unpaid FMLA include annual leave, sick leave, compensatory time, and/or personal holidays.
 - 8.1.1 A leave of absence covered by worker's compensation will not run concurrently with FMLA. An employee, who meets the FMLA eligibility requirements, may request FMLA run concurrently with absences due to work-related illness or injury covered by workers' compensation at any time during the absence.
- 8.2 Substitution of sick leave shall only be allowed under situations where sick leave would normally be allowed pursuant to state laws or CCS 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 a FMLA qualifying event.

9.0 Certification(s)

- 9.1 When an employee requests FMLA because of a qualifying exigency arising out of the fact the employee's spouse, son, daughter, or parent is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation, the employee will need to submit

appropriate official documentation issued by the Armed Forces to support the need for the leave.

- 9.2 When an employee requests FMLA for a qualified intermittent reason for his/her own serious health condition or to care for a family member with a serious health condition a 'Medical Certification' can be requested. The medical certification for the specific condition may need to be re-certified periodically, at CCS's request, to ensure accuracy of approvals.
- 9.3 After CCS receives a FMLA request or is notified of a medical qualifying FMLA event, the employee's or family member's health care provider must complete a 'Medical Certification' (unless one is on file for the specific condition). The certification must be completed within 15 calendar days of receipt and returned to the Human Resources Office. Failure to provide the requested certification may result in the denial of or discontinuation of a leave. An extension may be provided based on a reasonable explanation for the delay (e.g. reasons outside the employee's control such as treating physician is out of the office, the first available appointment is 16 calendar days from the time of receiving the form, etc.).
- 9.4 To ensure a timely and accurate assessment of a leave request, the 'Medical Certification' should be complete and all applicable information should be included. If CCS has questions regarding the initial certification, CCS may return the 'Medical Certification' to the employee with direction in writing to have the health care professional clarify information in the original certification. The employee will have 15 calendar days to obtain the information. HRO may contact the employee's health care provider only to authenticate and/or to clarify the certification. HRO will not ask the health care provider for more information beyond what is on the certification form.
- 9.5 In certain circumstances, CCS can ask the employee to update human resources with updates of expected return dates and if their health care provider has placed any restrictions upon return. See 11.0 below.
 - 9.5.1 A request for re-certification for an ongoing condition may be made periodically in connection with the employee's absence. CCS can request more frequent re-certification if the circumstances described in the previous certification have changed significantly or if CCS receives information that raises questions about the absence.
- 9.6 If CCS has reason to question the medical certification, CCS may, at its sole discretion, seek a second opinion from a health care provider of its choosing and expense. If the second opinion conflicts with the first opinion, a third opinion may be obtained at CCS' expense from a health care provider mutually chosen by the employee and CCS. The third opinion will be controlling. The employee will be considered provisionally entitled to leave pending the second and/or third opinion. If the third opinion determines the medical condition does not qualify as FMLA, the employee will be required to use paid leave options, if available. If no leave is available the employee may request leave without pay.

10.0 Continuation of Benefits

- 10.1 During approved FMLA leave, CCS will continue an eligible employee's health and other benefits at the same level and under the same conditions as if the employee had continued to work. The eligible employee will continue to be responsible for paying for his/her portion of health care and other benefit premiums during their FMLA absence.
- 10.2 During paid leave, CCS 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. Payment should be made to the Employee Compensation office. The employee using unpaid FMLA leave will be required to indicate on the FMLA request form how they intend to pay their share of premiums during their absence.

11.0 Return to Work

- 11.1 Prior to returning to work from an employee's own medical leave, the employee will be required to provide a 'fitness for duty certification', also known as a 'doctor's release' from a health care provider. The 'fitness for duty' certification must be job related and consistent with business necessity. A 'fitness for duty' certification will not be required after an intermittent leave unless the intermittent leave is due to the employee's own medical condition. This statement is to be submitted to the Human Resources Office during regular business hours by the employee prior to returning to the workplace.
- 11.2 When an employee returns to work from an approved FMLA event, the employee shall be returned to the same or an equivalent position, benefits, conditions of employment as if the employee had been continuously employed during the leave period.
- 11.3 If the employee's doctor believes the employee may return to work but with limitations/restrictions, the limitations/restrictions must be noted with expected duration of the restrictions. When an employee returns to work with such restrictions, temporary modified duties must be written out and reviewed. In cases of continued medical treatment, the employee is asked to make a reasonable effort to schedule the treatment so as not to disrupt unduly the department's operations.
 - 11.3.1 The employee's limitations/restrictions identified by the doctor interpret current doctor's recommendations. An employee's restrictions may change or need to be modified as recommendations change. If the employee cannot perform the modified duties, CCS may require the employee to bring an updated doctor's note with the new restrictions.
 - 11.3.2 When the updated doctor's note is received, new modified duties should be developed consistent with 11.3 above.

12.0 Leave Abuse

An employee on a FMLA leave must be out for the reason of the leave and may not receive compensation from another entity or conduct business other than the reason for the leave. An employee who fraudulently obtains FMLA leave is not protected by the FMLA's job restoration or maintenance of health benefits provisions and may be subject to appropriate disciplinary action up to and including termination. If you believe an employee is abusing their FMLA entitlement, please contact HRO for further guidance.

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