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## HUMAN RESOURCES DEPARTMENT POLICY AND PROCEDURES

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### *Family Medical Leave Act*

#### **PURPOSE**

Essex County College is aware of the importance of family and recognizes that our employees must often balance the demands of family obligations and work requirements. This means that employees may find it necessary to take leave from their jobs for a temporary period to address certain family responsibilities or their own serious health conditions and in order to comply with the Family and Medical Leave Act of 1993 (FMLA) and the New Jersey Family Leave Act (NJFLA), the College has established the following policy.

#### **SCOPE**

This policy applies to all Essex County College employees.

#### **POLICY**

##### **Federal Family Medical Leave Act (FMLA)**

The federal Family and Medical Leave Act of 1993 (FMLA) as amended in 2008 requires the college to provide eligible employees with unpaid leave. There are two types of leave available, including the basic 12-week entitlement (FMLA Leave), as well as the military family leave entitlements (Military Family Leave) described in this policy.

##### **Eligibility for FMLA Leave**

Employees are eligible for FMLA leave if they have:

- worked for the College for at least twelve (12) months
- worked at least 1,250 hours for the College during the 12 calendar months immediately preceding the request for leave

##### **FMLA Leave Reasons**

Employees who meet the eligibility requirements described above are eligible to take up to 12 weeks of unpaid leave during a 12-month period for one of the following reasons:

- To care for the employee's son or daughter during the first 12 months following birth;
- To care for a child during the first 12 months following placement with the employee for adoption or foster care;
- To care for a spouse, son, daughter, or parent with a serious health condition;

- For incapacity due to the employee's pregnancy, prenatal medical or childbirth; or
- Because of the employee's own serious health condition that renders the employee unable to perform the essential functions of his or her position.

In cases where both spouses are employed by the College, the spouses may together take a combined total of 12 weeks leave during a 12-month period to care for a new child or to care for a child following placement with the employee for adoption or foster care; or to care for a spouse, son, daughter, or parent with a serious health condition.

### **Military Family Leave**

There are two types of Military Family Leave available:

#### **1. Qualified Exigency Leave**

Employees meeting the eligibility requirements described above may be entitled to use up to 12 weeks of their FMLA Leave entitlement to address certain qualified exigencies. Leave may be used if the employee's spouse, son, or daughter is on active duty or called to active duty status in the National Guard or Reserves in support of a contingency operation. Qualifying exigencies may include:

- Short notice deployment (up to 7 days of leave)
- Attending certain military events
- Arranging for alternative child care
- Addressing certain financial and legal arrangements
- Periods of rest and recuperation for the service member (up to 5 days of leave)
- Attending certain counseling sessions
- Attending post-deployment activities (available for up to 90 days after the termination of covered service member's active duty status)
- Other activities arising out of the service member's active duty or call to active duty and agreed upon by the College and employee

#### **2. Leave to care for a covered service member**

There is also a special leave entitlement that permits employees who meet the eligibility requirements for FMLA leave to take up to 26 weeks of leave to care for a covered service member during a 12-month period.

A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has been rendered medically unfit to perform his or her duties due to a serious injury or illness incurred in the line of duty. The service member is undergoing medical treatments, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

In cases where both spouses are employed by the College, the spouses may together take a combined total of 26 weeks leave during a 12-month period to care for the same individual.

### **Use of Leave**

Family Leave may be taken as regular, intermittent or reduced leave when medically necessary.

1. Regular leave occurs when an employee takes time off from work for a continuous, uninterrupted block of time.
2. Intermittent leave is taken in separate blocks of time due to a single qualifying reason. Intermittent leave is unscheduled and is measured in hours, days or weeks.
3. Reduced leave is a change in the employee's scheduled working hours for a temporary period of time not to exceed 24 consecutive weeks.

Intermittent leave is not intended to care for a healthy newborn child or adopted child. Such leave may be granted at the sole discretion of the College. Military Family Leave due to qualifying exigencies may be taken on an intermittent basis.

An employee's Family Leave runs concurrently with other types of leaves, i.e. temporary disability, long-term disability and worker's compensation leave.

### **Pay, Benefits and Protections during FMLA Leave**

#### **Pay**

FMLA provides up to 12 weeks of unpaid leave.

The College requires the employee to use any available paid vacation, personal or sick leave, in accordance with the aforementioned policies, to which he or she is entitled during periods of Family Leave. The substitution of paid leave time during periods of Family Leave does not extend the 12-week leave period.

#### **Benefits**

During an approved Family Leave, the College will maintain the employee's health benefits in accordance with the group insurance policies. **When paid leave is substituted for unpaid Family Leave, the College will deduct the employee's portion of the health and dental plan premiums as a regular payroll deduction. If the leave is unpaid, the employee must pay his or her portion of the premium through a personal check.**

**An employee's health coverage will cease if the employee's premium payment is more than 30 days late. In the event an employee fails to return to work after the approved Family Leave expires, the College will recover the premiums the College paid for coverage during the leave period.** Exceptions exist if the employee does not return to work due to:

1. The continuation, recurrence or onset of a serious health condition of the family member of the employee that would otherwise entitle the employee to take the leave.
2. Other circumstances beyond the employee's control.

## Protections

Upon return from Family Leave an employee is entitled to be restored to the position held when the leave commenced or an equivalent position with equivalent pay, benefits and terms and conditions of employment. The employee is entitled to any right, benefit or position to which he or she would have been entitled had he or she not taken Family Leave.

## *Definitions*

### **Serious health condition**

1. An illness, impairment or physical or mental condition that involves either in-patient care (i.e., an overnight stay in a hospital, hospice or residential care facility); or
2. Continuing treatment by a healthcare provider.

### **Family member**

Is defined as a child (including step-child, adopted child, foster child), parent (including foster parent, step-parent, parent-in-law and legal guardian), and spouse of the employee.

## **New Jersey Family Leave Act**

The New Jersey Family Leave Act (NJFLA) requires employers with 50 or more employees to provide eligible employees with up to 12 weeks of unpaid leave in a 24 month period to bond with a newborn or newly adopted child or to care for a family member with a serious health condition. The NJFLA does not cover an employee's own serious health condition.

NJ state law grants couples in civil unions the same rights, benefits and responsibilities as those in traditional marriages. The NJFLA definition of family member includes a civil union partner.

### Eligibility for NJFLA Leave

Employees are eligible for NJ Family Leave if they have:

- worked for the College for at least twelve (12) months
- worked at least 1,000 hours (excluding overtime) for the College during the 12 calendar months immediately preceding the request for leave

### **NJFLA Leave Reasons**

Employees who meet the eligibility requirements described above are eligible to take up to 12 weeks of unpaid leave during any 24-month period for one of the following reasons:

1. To care for the employee's son or daughter during the first 12 months following birth;
2. To care for a child during the first 12 months following placement with the employee for adoption or foster care;
3. To care for a spouse, son, daughter, parent or parent-in-law with a serious health condition.

## Use of Leave

NJ Family Leave may be taken as regular, intermittent or reduced leave when medically necessary.

1. Regular leave occurs when an employee takes time off from work for a continuous, uninterrupted block of time.
2. Intermittent leave is taken in separate blocks of time due to a single qualifying reason. Intermittent leave is unscheduled and is measured in hours, days or weeks.
3. Reduced leave is a change in the employee's scheduled working hours for a temporary period of time not to exceed 24 consecutive weeks.

Intermittent leave is not intended to care for a healthy newborn child or adopted child. Such leave may be granted at the sole discretion of the College.

## Pay, Benefits and Protections during NJFLA Leave

### Pay

NJ Family Leave provides up to 12 weeks of unpaid leave in a 24-month period.

The College requires the employee to use any available paid vacation or personal leave, in accordance with the aforementioned policies, to which he or she is entitled during periods of NJ Family Leave. The substitution of paid leave time during periods of NJ Family Leave does not extend the 12-week leave period.

### Benefits

During an approved NJ Family Leave, the College will maintain the employee's health benefits in accordance with the group insurance policies. **When paid leave is substituted for unpaid NJ Family Leave, the College will deduct the employee's portion of the health and dental plan premiums as a regular payroll deduction. If the leave is unpaid, the employee must pay his or her portion of the premium through a personal check.**

**An employee's health coverage will cease if the employee's premium payment is more than 30 days late. In the event an employee fails to return to work after the approved Family Leave expires, the College will recover the premiums the College paid for coverage during the leave period.**

**Exceptions exist if the employee does not return to work due to:**

1. The continuation, recurrence or onset of a serious health condition of the family member of the employee that would otherwise entitle the employee to take the leave.
2. Other circumstances beyond the employee's control.

### Protections

Upon return from NJ Family Leave an employee is entitled to be restored to the position held when the leave commenced or an equivalent position with equivalent pay, benefits and terms and conditions of employment. The employee is entitled to any right, benefit or position to which he or she would have been entitled had he or she not taken Family Leave.

## ***Definitions***

### **Serious health condition**

1. An illness, impairment or physical or mental condition that involves either in-patient care (i.e., an overnight stay in a hospital, hospice or residential care facility); or
2. Continuing treatment by a healthcare provider.

### **Family member**

Is defined as a child (including step-child, adopted child, foster child), parent (including foster parent, step-parent, parent-in-law and legal guardian), spouse or civil union partner of the employee.

In cases where a both spouses are employed by the College, they may together take a combined total of 12 weeks leave during a 24-month period.

### ***New Jersey Family Leave Insurance***

Effective July 1, 2009, New Jersey Temporary Disability Benefits law was changed to provide eligible employees with up to six (6) weeks of [Family Leave Insurance benefits](#). Benefits are payable to covered employees from the State of New Jersey to:

**Bond with a child** during the first 12 months after the child's birth, if the covered individual is a biological parent of the child, or the first 12 months after the placement of the child for adoption with the covered individual.

**Care for a family member with a serious health condition** supported by a certification provided by a health care provider. Claims may be filed for six consecutive weeks, for intermittent weeks or for 42 intermittent days during a 12 month period beginning with the first date of the claim.

### **The NJ Family Leave Insurance Facts**

- The NJ Family Leave Insurance benefits program provides covered individuals a monetary benefit, not a leave entitlement.
- The NJ Family Leave Insurance benefits program does not establish the right of a covered individual to be restored to employment following a period of leave from work to participate in providing care for a family member or to bond with a child.
- Benefit entitlement may be reduced up to two weeks for any paid sick leave, vacation time or other leave at full pay required to be taken by the employer.

### **Benefit Duration and Amount**

A claimant can receive a maximum of six weeks of Family Leave Insurance benefits in a 12 month period. The weekly benefit rate is based on the claimant's average weekly wage in the eight calendar weeks immediately before the family leave begins. The weekly benefit rate is two-thirds (2/3) of the average weekly wage up to the current maximum as determined by the State of NJ.

### **How to Apply**

Obtain a claim form from the Division of Temporary Disability by calling the Customer Service Section at (609) 292-7060.

## **EMPLOYEE RESPONSIBILITIES WHEN REQUESTING FMLA OR NJFLA**

### **Employee Notice to College**

If the need to use FMLA or NJFLA is foreseeable, the employee must provide the College with at least 30 days prior notice. When 30 days' notice is not possible, the employee must give notice as soon as practicable (within 1 or 2 business days of learning of the need for leave except in extraordinary circumstances). Failure to provide such notice may be grounds for delaying the start of FMLA or NJFLA leave.

- 1. The employee may obtain the Employee Leave Request Form from the Department of Human Resources or online from the HR web page. The employee must complete the form and submit to his or her immediate supervisor.**
- 2. The supervisor signs the form and forwards it to the Department of Human Resources immediately.**
- 3. The supervisor completes a Salary Change/Payment Authorization Form to place employee on leave. Forward the form for all required signatures.**

When submitting a request for leave, the employee must provide sufficient information for the College to determine if the leave might qualify as FMLA or NJFLA leave, and also provide information on the anticipated date when the leave would start as well as the duration of the leave. Calling in "sick" is not sufficient. Sufficient information may include that the employee is unable to perform job functions; that a family member is unable to perform daily activities; that the employee or family member needs hospitalization or continuing treatment by a healthcare provider; or the circumstances supporting the need for military family leave. Employees must also inform the College if the requested leave is for a reason for which FMLA or NJFLA leave was previously taken or certified. Employees also will be required to provide a certification and periodic recertification supporting the need for leave.

### **Medical Certification**

If the employee is requesting leave because of the employee's own or a covered family member's serious health condition, the employee and relevant healthcare provider must supply appropriate medical certification. Employees may obtain Medical Certification Forms from the Department of Human Resources or online from the HR web page. When the employee requests leave, the Department of Human Resources will notify the employee of the requirement for medical certification and when it is due (no more than 15 days after the requested leave). If the employee provides at least 30 days' notice of medical leave, he or she should also provide the medical certification before leave begins.

Failure to provide requested medical certification in a timely manner may result in denial of leave until it is provided. The College, at its expense, may require an examination by a second healthcare provider designated by the College, if it reasonably doubts the medical certification initially provided. If the second healthcare provider's opinion conflicts with the original medical certification, the College, at its expense, may require a third, mutually agreeable, healthcare provider to conduct an examination and provide a final and binding opinion.

The College may require subsequent medical recertification. Failure to provide requested certification

within 15 days, except in extraordinary circumstances, may result in the delay of further leave until it is provided.

### **Returning to Work at End of Leave**

The employee must return to work immediately upon conclusion of FMLA or NJFLA leave. If an employee fails to return to work in a timely manner, employment will be terminated on the basis of job abandonment.

## **EMPLOYER RESPONSIBILITIES**

### **College Notice to Employee**

When an employee requests a leave, or when the College designates disability or worker's compensation leave as FMLA, the Department of Human Resources will confirm eligibility for a leave under FMLA and NJFLA. The employee will be given a written notice that includes details on any additional information he or she will be required to provide and the amount of leave that will be counted against his/her 12 week entitlement.

If the employee is not eligible under FMLA or NJFLA, Human Resources will provide the employee with a written notice indicating the reason for ineligibility. If an employee begins a leave before the Department of Human Resources notifies the employee of a denial of the request, the employee must return to work within 3 calendar days of the date of written notice. An employee has the right to meet with a representative from the Department of Human Resources to discuss the denial of leave.

### **The 12-Month Period**

FMLA and NJFLA regulations allow employers to use any of four different methods to determine the 12-month period for counting and tracking Leave. The College will track all leaves on a Rolling 12-Month Period basis. This method measures the 12-week leave period backward, from the date an employee last used any FMLA or NJFLA leave.

### **Greater Prevailing Law**

In all Family Leaves, the provisions of FMLA or NJFLA will prevail. Whichever law provides the greater benefits to employees will be followed.

### **DISCLAIMER**

This policy does not create a contract of employment or alter the at-will employment relationship between the College and its employees. Nothing contained in this policy shall limit the right of either the College or the employee to terminate the employment relationship at any time, with or without cause.

### **RESPONSIBLE OFFICE AND EXECUTIVE**

Responsibility for the interpretation and administration of this policy resides solely with the Department of Human Resources. The Director of Human Resources is responsible for the overall administration of the Colleges' Family Medical Leave policy.

**The College reserves the right to amend this policy at any time.**