

**HUMAN RESOURCES**  
**Index No. VI-13**

TO: MCC Employees

FROM: Office of the President

SUBJECT: Employee Short-Term Leave Procedures

DATE: April 28, 2016

PURPOSE: To provide guidelines for employee attendance and use of short-term leave.

SCOPE: This procedure has been written to provide a comprehensive overview of the various types of short-term leave available at the College. Some departments may have additional procedures that vary from those set forth in the PM so employees are advised to discuss departmental procedural requirements with their supervisor.

Note: For bargaining unit employees, provisions related to short-term leave may be addressed in and governed by applicable collective bargaining agreements. Provisions of this Procedures Memorandum not specifically addressed in applicable collective bargaining agreements apply to bargaining unit employees. Since different employee groups may have differing short-term leave provisions, each leave category is preceded by an "applicability" statement to insure clarity and understanding.

1. General Principles

Employees are expected to be at work on time for their scheduled work period. Any deviation from the established work schedule must be communicated by the employee to his/her supervisor prior to the beginning of the work period affected.

2. Definitions

Short-Term Leave - Categories addressed herein include the following:

|                          |  |
|--------------------------|--|
| annual leave             | sick leave                                 |
| personal leave           | court, jury, and election service leave    |
| educational leave        | military leave                             |
| bereavement leave        | catastrophic disability leave              |
| family and medical leave | and servicemember family and medical leave |

Authorized Leaves - Absences are normally authorized in advance by the employee's supervisor or another designated employee in the supervisory chain. An employee who knows that he/she will be absent from work and said absence has not been previously authorized must notify his/her supervisor prior to the beginning of the scheduled work period, except in an emergency during which the employee is unable to notify the supervisor. In this situation, the supervisor

should be notified as soon as is reasonably possible. Failure to do so may be grounds for disciplinary action.

The process of documenting leave time differs depending on the type of leave and the individual's employment status:

- A. Non-exempt (hourly paid) staff – all requests to use annual and sick leave are to be processed through Kronos. For other types of leave, listed below, an *Absence and Leave Request Form* is to be completed by the employee and approved by the supervisor prior to the employee utilizing the requested leave time.
- B. Exempt (salaried) staff - requests to use annual and sick leave are to be processed through Kronos or through completion of an *Absence and Leave Request Form*. Employees will be advised as to which method to use. For other types of leave, listed below, an *Absence and Leave Request Form* is to be completed by the employee and approved by the supervisor or other designated employee prior to the employee utilizing the requested leave time.
- C. Certain kinds of leave require supporting documentation and/or signatures in addition to the immediate supervisor's. This 'other type leave' category includes:
  - (1) court, jury and election leave
  - (2) military leave
  - (3) bereavement leave
  - (4) personal leave
  - (5) catastrophic disability leave
  - (6) educational leave
  - (7) leave without pay

### 3. Annual Leave

**Applicability** - The procedures outlined herein regarding annual leave apply to all regular non-exempt (hourly paid) employees and regular exempt (salaried) employees with the exception of faculty.

Annual leave is accrued for periods during which the employee is on paid status from the College with the exception that the accrual will not occur during catastrophic disability leave.

Effective July 1, 2016 the maximum amount of annual leave that can be accumulated is 280 hours. Employees who accumulate 280 hours will not accrue any additional annual leave until their balance drops below 280 hours. Prior to implementation of the 280 hour limitation on accrual of annual leave, the College will encourage employees who have annual leave balances in excess of 250 hours to use as much of it as they are able by June 30, 2016. If any employee's annual leave balance remains above 250 hours as of June 30, 2016 those hours above 250 will be subject to a one-time buy back by the College at the employee's then effective hourly or per diem rate, whichever is applicable.

The accrual rates and maximum accumulations of days and hours for different categories of employees are indicated below:

Full-Time Regular Exempt Employees  
(excluding Faculty)

| Months of Service | Leave Hours Earned Per Month | Equivalent Days/Hours Per Year* | Maximum Accumulation Days/Hours |
|-------------------|------------------------------|---------------------------------|---------------------------------|
| 0-36              | 12                           | 18/144                          | 35/280                          |
| 37 or more        | 14                           | 21/168                          | 35/280                          |

Full-Time Regular Non-Exempt (Hourly Paid) Employees

| Months of Service | Leave Hours Earned Per Month | Equivalent Days/Hours Per Year | Maximum Accumulation Days/Hours |
|-------------------|------------------------------|--------------------------------|---------------------------------|
| 0-36              | 8                            | 12/96                          | 35/280                          |
| 37-60             | 10                           | 15/120                         | 35/280                          |
| 61-120            | 12                           | 18/144                         | 35/280                          |
| 121 or more       | 14                           | 21/168                         | 35/280                          |

Part-Time Regular Non-Exempt (Hourly Paid) Employees\*\*

| Months of Service | Leave Hours Earned Per Month - .70 FTE | Maximum Accumulation Day/Hours |
|-------------------|--|--------------------------------|
| 0-36              | 5.5                                    | 35/280                         |
| 37-60             | 7                                      | 35/280                         |
| 61-120            | 8.5                                    | 35/280                         |
| 121 or more       | 10                                     | 35/280                         |

- A. The following subparagraphs apply to employees compensated from funds received by the College under grants, special contracts and special-funded positions which require that these monies be expended during the term of the grant, special contract, or special-funded position.
- 1) Use of Annual Leave - Annual leave utilized shall not exceed the hours accrued and is with pay at the employee's hourly or per diem rate, whichever is applicable. Annual leave must be utilized during the term of the grant or special contract and preferably during the year in which it is accrued. Employees who are not sure if they are employed under a grant or special contract should contact their supervisor or the Human Resources Office for verification.

- 2) Non-Renewal of Grant - Employees paid from multi-year grants or special projects that are subject to discretionary annual funding renewal must recognize that if funding is not renewed, accrued annual leave must be taken prior to the grant's termination date. Supervisors should keep track of the employees' accrued leave to ensure that all accumulated annual leave is exhausted by the termination of the employees' employment. In this situation, employees are expected to work with their supervisor to schedule the use of this accrued annual leave in order to minimize the disruption of College operations. If necessary to exhaust an employee's accrued annual leave prior to the end of the term of employment, the supervisor may require that the employee utilize the leave and unilaterally schedule the leave time for the employee.
- 3) Early Release - If an exempt employee who is paid from multi-year grants or special projects subject to discretionary annual funding renewal wishes to obtain a release from his/her contract prior to the end of the contract term, the employee shall submit a written request for early release through channels to the President in a timely manner. A professional employee seeking early release is expected to submit his/her request as much in advance of the requested release date as is possible, but in no event less than thirty (30) days preceding the requested release date, exclusive of any annual leave days the employee intends to take between the date of request and the requested release date. No annual leave will be taken prior to the employee's release date except as approved by the College President, and accrued but unused annual leave shall be paid to the employee at release date.
- 4) Transfer Between and Among Grant-Funded and Non-Grant-Funded Positions - Carryover of annual leave accrued from grant or special contract funds to other positions within the College or from other positions to grant or special contract funded positions is subject to approval by the Executive Vice President. If carryover is not approved, the employee will be forced to utilize all accrued annual leave or may be paid for accrued but unused annual leave at the College's sole discretion.

#### 4. Sick Leave

Applicability - The procedures outlined herein regarding sick leave apply to all regular non-exempt (hourly paid) employees and regular exempt (salaried) employees except counselors and faculty, whose sick leave provisions are described in their collective bargaining agreement.

Sick leave pertains to absence due to: 1) illness or injury of the employee, including absence caused or contributed to by pregnancy or childbirth; 2) the need to prevent exposure of coworkers and the public to contagious disease; 3) the employee's need to obtain dental or medical care; 4) illness or injury of a member of the employee's "immediate family" requiring the personal care and presence of the employee, defined herein as father, mother, current spouse, dependent children and dependent step-children, whether living in the employee's home or elsewhere; and any relative living in the household of the employee; or

5) adoption of a child when that child requires the personal care and presence of the employee. (See also Paragraph 15 on Family and Medical Leave for other permissible circumstances.)

When an employee loses time from scheduled work for reasons applicable to sick leave, the employee must use accrued sick leave, if available. If an employee's accrued sick leave is insufficient to cover the absence, and the employee has insufficient accrued annual leave to cover the absence, the employee may request a leave of absence without pay. The length of leave of absence without pay is subject to the provisions outlined in the procedures covering leave of absence related to illness or injury and to the provisions of Paragraph 15 on Family and Medical Leave. (See also [Procedures Memorandum VI-1 "Leave Without Pay."](#))

An employee who needs to be absent for any of the aforementioned reasons shall communicate this information to his/her supervisor as soon as possible. Sick leave may be approved verbally through telephone contact with the employee's supervisor prior to the beginning of the scheduled work period; however, the proper leave approval documentation (Kronos or *Absence and Leave* form) must be completed as soon as possible after the employee returns to work.

Sick leave is a privilege, and abuse thereof may result in discipline and/or termination. The College reserves the right to require satisfactory evidence of illness or injury from the employee's attending physician or other health care provider, and, if appropriate, a certification as to the employee's fitness to return to work. To protect the privacy rights of all employees, requests for medical documentation shall be made only by the Human Resources Office. Supervisors are expected to notify Human Resources once an employee misses three consecutive days of work.

Sick leave is accrued for periods during which the employee is on paid status at the College (or receiving workers' compensation benefits), with the exception that leave accrual will not occur if the employee is on catastrophic disability leave. For full-time, regular non-exempt and exempt employees (excluding counselors and faculty) the accrual rate for sick leave is eight hours per month, and the maximum accrual for sick leave is 110 days. For part-time regular non-exempt employees, the accrual rate for sick leave is 5.5 hours per month (605 hours maximum accrual) for those holding a .70 FTE position.

The College will not purchase or otherwise compensate employees for unused sick leave, except as provided herein. Excluding academic advisors, counselors and faculty whose payout provisions are described in their collective bargaining agreement, regular full-time exempt and full- and part-time non-exempt employees are entitled to a partial sick leave payout when they die or retire in accordance with the provisions stated below:

- A. Death – In the event an employee dies while in the employment of the College, the College shall pay 50% of the employee's accumulated and unused sick leave at the employee's current hourly or daily rate of pay, whichever is applicable, to the designated beneficiary.

B. Retirement from service with the College – When the employee attains a minimum age of sixty and achieves a minimum total point score of seventy (sum of age attained and years of full or part-time service with the College), the College shall pay to the employee a portion of said employee's accrued but unused sick leave. When computing the payout, the maximum sick leave accrual considered eligible for a partial payout is up to 110 days, and the maximum percentage allowed is up to 25% of the eligible sick leave accrual. Any sick leave payout will be calculated at the employee's current hourly or daily rate of pay, whichever is applicable, and in accordance with the schedule shown below.

| <u>Total Point Score at<br/>Time of Retirement</u> | <u>Percentage<br/>of Payout</u> |
|--|---------------------------------|
| 80 or more   | 25%                             |
| 79   | 24%                             |
| 78   | 23%                             |
| 77   | 22%                             |
| 76   | 21%                             |
| 75   | 20%                             |
| 74   | 19%                             |
| 73   | 18%                             |
| 72   | 17%                             |
| 71   | 16%                             |
| 70   | 15%                             |

Examples:

| <u>Age</u> | + | <u>Length of Service</u> | = | <u>Percentage Payout</u> |
|------------|---|--------------------------|---|--------------------------|
| 60         |   | 10 years                 |   | 15%                      |
| 64         |   | 08 years                 |   | 17%                      |
| 66         |   | 20 years                 |   | 25%                      |

#### 5. Attendance Incentive Program

Applicability - The procedures outlined herein regarding the attendance incentive program apply to all full-time regular non-exempt (hourly paid) and exempt (salaried) employees, with the exception of academic advisors, counselors, and faculty.

The purpose of the attendance incentive program is to reward the judicious use of sick leave by giving employees who use eight (8) or fewer hours of sick leave for themselves or for their eligible dependents during the previous fiscal year an extra day (eight hours) of annual leave, subject to any applicable maximum accumulation limit. Annually in July, the Human Resources Office will notify staff who are eligible to receive this leave.

#### 6. Personal Leave

Applicability - The personal leave category applies only to full-time faculty covered under the Academic Advisors, Counselors, and Faculty collective bargaining agreement. Full-time faculty covered under this agreement should refer to the current agreement for information about applicable personal leave provisions.

Requests for personal leave normally require Vice Presidential approval and must be made on the appropriate College leave form. In an emergency, the Dean may grant personal leave without prior approval of the Vice President.

#### 7. Court, Jury, and Election Service Leave

**Applicability** - The procedures outlined herein apply to all employees of the College.

Leave with pay shall be authorized for any employee who is: (a) officially required to report for jury duty, (b) subpoenaed in litigation to which he/she is not a party, except litigation to which the employee is a party or witness by reason of his/her employment with the College, or (c) ordered to serve as an election official.

Any payment received for court, jury, or election service, exclusive of mileage and parking fee reimbursement, must be turned over to the College. Contact the payroll office for the repayment options available. A full accounting of payment received by the employee for court, jury, or election service shall be provided at the conclusion of the leave period through normal supervisory channels.

**Special Provision for Non-Exempt (Hourly-Paid) Employees:** The College will not require the employee to turn over more than the pay associated with the number of hours the employee would have been scheduled to work on that day. For example, if the employee was scheduled to work an eight-hour day at the College and instead worked ten hours at election duty, the employee would be required to turn over 80% of his/her election pay to the College. Conversely, if the employee was scheduled to work an eight-hour day at the College but only worked six hours at election duty yet did not report to work after his/her service, he/she would be required to make up two hours within the same work week or take two hours of annual leave.

Notification of the need for court, jury, or election service leave must be made on the appropriate College form with additional details and supporting documentation attached. Court, jury, and election service leave requires the approval of the immediate supervisor who is verifying that the appropriate documentation has been provided.

#### 8. Educational Leave

**Applicability** - The procedures outlined herein relating to educational leave apply to all regular exempt employees of the College.

Exempt staff may request educational leave, other than sabbatical, to be used for the purpose of enrolling or teaching in a college, university, or special workshop or institute, and for certain types of consultant activities. Requests for educational leave must be made on the appropriate College leave form with additional details and supporting documentation attached. Educational leave is normally without pay unless it is taken at the request of the President.

## 9. Military Leave

Applicability - The procedures outlined in this section apply to College employees as described herein.

Notification of the need for military leave must be made on the appropriate College leave form with additional details and supporting documentation attached, including a copy of the relevant military orders. Military leave requires the approval of the immediate supervisor who is verifying that the appropriate documentation has been provided.

### A. Military Leave Pay

#### (1) State of Nebraska Non-Emergency Active Service

Employees who are members of the National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve may take military leave when summoned into or employed in non-emergency active military service of the State of Nebraska; for example, Reserve or National Guard summer camps. The College will pay the employee's normal daily rate of pay to such employees, not to exceed fifteen (15) work days in any one calendar year, during such non-emergency active service. This service for up to fifteen (15) work days in any one calendar year will not result in a reduction of the employee's accrued annual leave.

#### (2) State of Nebraska Emergency Active Service

Employees who are members of the National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve ordered to emergency active service by the Governor of Nebraska; for example, to serve during tornado, flood, and blizzard emergencies, will be granted military leave until released from such emergency active service by competent authority. The College will pay the difference between the employee's military salary or compensation and the employee's normal College salary or compensation, provided the College salary or compensation is greater. Employees returning from such military leave shall submit to the Payroll Office evidence of military pay received. This does not apply to active service in the service of the United States; that is, the federal government.

Note: Similarly situated College employees who are residents of a state other than Nebraska and are called to duty for non-emergency or emergency active service will be granted comparable military leave in accordance with the provisions outlined above.

#### (3) Federal Service

(a) Employees who are members of the National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve may take military leave when ordered into or employed in the military service of the

United States; that is, the federal government. The College will pay the employee's normal daily rate of pay to such employees for a period not to exceed fifteen (15) work days in any one calendar year. This service for up to fifteen (15) work days in any one calendar year will not result in a reduction of the employee's accrued annual leave.

- (b) Employees may take military leave to undergo military training with the armed forces of the United States. The College will pay the employee's normal daily rate of pay to such employees, not to exceed fifteen (15) work days in any one calendar year, during such service.
- (c) During any one calendar year, the College will not pay more than an aggregate of fifteen (15) days full pay to an employee under subparagraphs 12.A(3) (a) and (b). In other words, pay under subparagraph 12.A(3) (b) shall not be construed as being in addition to pay under subparagraph 12.A(3) (a).
- (4) The intention of the above military leave pay provisions is to assure that employees receive all pay due to them under Sections 55-160 and 55-161 of the Nebraska Revised Statutes, as amended. If applicable state or federal statutes are enacted or amended, the College will abide by the requirements of the law as it is then current, without regard to contradictory provisions of this section, if any. The College does not pay employees with respect to the period of military leave, except as provided in such statutes.

#### B. Reinstatement after Military Leave

This policy complies with the Uniformed Services Employment and Reemployment Rights Act (USERRA), and as it may hereafter be amended.

- (1) Employees who take military leave (other than for State of Nebraska or State of Iowa emergency active service) are entitled to reinstatement on return from military leave which lasts for a period no longer than four years (except to the extent a longer period of time may be required by federal law), if they make application for reinstatement within the time and in the manner required by law. Reinstatement may be denied under this subparagraph if the employee's military service was not satisfactorily completed, if the employee was not released from military service under honorable conditions, or if the employee is otherwise not qualified under the law.
- (2) Employees called to State of Nebraska (or a state other than Nebraska) emergency active service under the circumstances described in subparagraph 12.A(2), above, shall be entitled to reinstatement upon release from such emergency active service, if they make application for reinstatement within the time and in the manner required by law.

## 10. Bereavement Leave

Applicability - The procedures outlined herein regarding bereavement leave apply to all regular non-exempt (hourly paid) employees and to all regular exempt (salaried) employees except for academic advisors, counselors, and faculty whose bereavement leave provisions are described in their collective bargaining agreement.

Subject to the approval of the respective Vice President, Executive Vice President, or College Business Officer, an employee covered under this procedure is eligible to take bereavement leave in the event of a death within the employee's immediate family. For the purpose of bereavement leave, the term "immediate family" shall include the employee's father, mother, step-father, step-mother, grandfather, grandmother, spouse, child, step-child, grandchild, brother, sister, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and any other relatives living in the employee's household.

With regard to a miscarriage or stillbirth, bereavement can be used if the baby is given a name, has a birth/death certificate and a funeral service. Otherwise, the employee may use sick leave.

In no case shall the leave exceed five (5) days or forty (40) hours for any one death, or more than a total of twelve (12) days or ninety-six (96) hours in a fiscal year. Bereavement leave days do not have to be taken consecutively.

In addition, approved time off without pay may be granted for a period of up to a maximum of three days for the death of an aunt, uncle, first cousin, niece, or nephew. The length of the leave will vary depending on the circumstances. With the approval of the employee's supervisor, an employee may utilize accrued annual leave instead of leave without pay.

Furthermore, bereavement leave may be granted for attendance at the funeral service for a coworker at the College where there has been a personal friendship. The granting of this bereavement leave is subject to the supervisor's determination that the absence will not create an interruption in essential work flow.

Requests for bereavement leave must be made on the appropriate College leave form. The Vice President, Executive Vice President, or College Business Officer reserves the right to request written verification of leave upon granting of leave. Bereavement leave is with pay at the employee's hourly or per diem rate, whichever is applicable.

## 11. Catastrophic Disability Leave

A. Applicability - The procedures outlined herein relating to catastrophic disability leave apply to all full-time regular College employees who have been employed in one or more full-time regular positions at the College for a minimum of one year immediately preceding the commencement of the absence in question.

If awarded by the College President, catastrophic disability leave allows short-term disability payments to a disabled employee during the ninety-day waiting period required before an employee is eligible for consideration under the College's long-term disability insurance plan. Specific provisions regarding the extent of disability, duration of incapacity, and prior exhaustion of accrued sick, annual, and other paid leave benefits apply concerning catastrophic disability leave. Catastrophic disability leave is not intended to be available as a supplemental sick leave plan whenever sick leave becomes exhausted. Rather, award of catastrophic disability leave is entirely within the discretion of the College President and is intended to be made available only in situations in which the occurrence of long-term disability is anticipated.

Catastrophic disability leave may be awarded to an employee only if all four of the following requirements are met:

- 1) The employee is disabled by accidental bodily injury or physical or mental illness which is not compensable by workers' compensation or under any other disability insurance plan;
  - 2) The employee is unable to perform the material and substantial duties of the employee's position at the College and any substitute duties which the College may offer;
  - 3) It is anticipated and reasonably likely that the employee's disability will extend into long-term disability as defined in the College's long-term disability insurance plan; and
  - 4) The employee has never previously received catastrophic disability leave pay from the College under this or any predecessor catastrophic disability leave plan.
- B. Conditions - If awarded, catastrophic disability leave pay will commence only after all of the employee's accumulated sick leave, annual leave, and personal leave accruals have been exhausted and only after twenty (20) consecutive work days have been expended in a non-work status. Some portion or all of those twenty (20) consecutive work days will be unpaid if the employee has insufficient sick leave, annual leave, and personal leave accrued so as to be entitled to payment for those days.

To be considered for catastrophic disability leave pay, an employee must further:

- 1) be in good employment standing; that is, not undergoing or subject to any pending imposed disciplinary action;
- 2) have been employed in one or more full-time regular positions at the College for a minimum of one consecutive year immediately preceding the commencement of the absence in question; and
- 3) not have an established termination, resignation, or retirement date which is within

thirty (30) calendar days of the proposed start date of catastrophic disability leave pay.

C. Benefits – If the College President awards an employee catastrophic disability leave pay, the College will:

- 1) pay the employee catastrophic disability leave pay at two-thirds (2/3) of the employee's base pay rate for a maximum period of forty-five (45) work days.
- 2) make contributions to the employee's retirement plan based upon the catastrophic disability leave amount actually paid and the contribution percentage the employee elected and the College matched immediately prior to the employee's absence from work.

D. Catastrophic pay will end effective not later than when long-term disability payments effectively begin. The employee must reimburse the College the amount of catastrophic pay paid to the employee for any work day for which the long-term disability insurance carrier pays any long-term disability benefits to the employee. Additional conditions associated with catastrophic disability leave are:

- 1) An employee who resigns, retires, or otherwise voluntarily terminates employment with the College for a reason other than disability within one year after receiving any payment for catastrophic leave must repay to the College the entire amount of that catastrophic disability leave pay, unless such payment is waived by the College President. An employee who accepts catastrophic disability leave thereby agrees to this repayment provision.
- 2) Any days of an employee's lifetime maximum allowance of catastrophic disability leave which have not been taken as of the date of the employee's resignation, dismissal, retirement, or death will not be paid to the employee or any beneficiary, representative, or estate of the employee.
- 3) During the period of catastrophic leave, sick leave and annual leave are not earned by the employee and do not accrue.

Requests for catastrophic disability leave must be made in writing and substantiated by medical certification. To protect the privacy rights of all employees, only Human Resources may request and maintain medical information about College employees.

The College President has and reserves the sole and exclusive rights to interpret and determine the meaning of this catastrophic disability leave policy and whether an employee shall be awarded catastrophic disability leave pay under this policy. All such determinations by the College President shall be final and binding, and no grievance procedure shall be available or utilized to review or appeal any such determination.

## 12. Family and Medical Leave (FMLA) and Servicemember Family and Medical Leave

**Applicability** - The guidance and procedures outlined herein relating to family and medical leave apply to employees who are "eligible employees" as defined in subparagraph A.(3) below, and as may be amended by state or federal law. The College's intent is to fully comply with the FMLA, as amended and interpreted by the courts and the federal government. If applicable state or federal statutes are amended, or reinterpreted, to change the application or meaning of the law, then the College will abide by the requirements of the law as it is then current without regard to contradictory provisions of this section, if any.

**Purpose and Reservation** - This guidance describes the conditions under which eligible employees may request time off without pay for limited time periods for family and medical leave with job protection. It is intended to facilitate compliance with the federal Family and Medical Leave Act of 1993 (the "Act"), but cannot realistically cover every possible situation which may arise under the Act. The College reserves the discretionary rights to fully and finally construe the terms of this guidance, determine eligibility for and the extent of benefits to be granted under this guidance, and to allow or disallow benefits under this guidance in specific factual circumstances in any manner or under any conditions allowed by the Act. This guidance shall not be construed or interpreted to entitle any employee to any benefit greater or more favorable to the employee than is required by the Act or by valid regulations implementing the Act.

A. **Definitions** - As used in this guidance, the following terms have the following meanings.

- (1) **Family or Medical Leave** - The term "family or medical leave" means an approved absence potentially available to eligible employees for up to a total of twelve (12) weeks of unpaid leave during an applicable twelve-month period under the following circumstances: (a) Because of the birth of the employee's son or daughter, and in order to care for such son or daughter ("birth leave"); (b) Because of the placement of a son or daughter with the employee for adoption or foster care ("placement leave"); (c) In order to care for the employee's spouse and/or qualifying son, daughter, or parent who has a serious health condition ("health of relative leave"); or (d) When the employee is unable to perform the functions of his or her position because of a serious health condition of the employee ("health of employee leave").

**Limitations:** Under certain circumstances, birth leave or placement leave may be taken prior to the actual birth or placement. Entitlement to birth leave or placement leave shall expire one calendar year after the date of birth or placement.

Spouses who are both employed by the College will be entitled to a total of twelve (12) weeks of leave between them (rather than twelve weeks each) during an applicable twelve-month period for birth leave, placement leave, or health of a relative leave where taken to care for a parent having a serious health condition. If a husband and wife both use a portion of the total twelve-week FMLA leave entitlement for one of the reasons listed in the preceding sentence, each would be

entitled to the difference between the amount he or she has taken individually and twelve (12) weeks for FMLA leave for other reasons. For example, if each spouse took six (6) weeks of leave for the birth of a child, each could later use an additional six (6) weeks due to a personal illness or to care for a sick child for a total of (12) weeks combined between the two spouses.

- (2) An Applicable Twelve-Month Period - The phrase "an applicable twelve-month period," as used in the phrase "up to a total of twelve (12) weeks of unpaid leave during an applicable twelve-month period" in subparagraph A.(1) above, means the rolling twelve-month period measured backward from the date an employee uses any family or medical leave after previously having taken any family or medical leave. For further clarification of this provision, contact Human Resources.
- (3) Eligible Employee - The term "eligible employee" means an employee who has been employed by the College (a) for a total of at least twelve (12) months (which need not be consecutive) and for at least 1,250 hours of service during the twelve (12) consecutive months immediately preceding the requested date of leave commencement, and (b) who is employed by the College at a worksite and fifty (50) or more employees are employed by the College within seventy-five (75) miles of that worksite.
- (4) Employment Benefits - The term "employment benefits" means all benefits provided or made available by the College to employees, as applicable under the College's benefit plans, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and retirement plans.
- (5) Group Health Plan - The term "group health plan" means any plan of, or contributed to by, the College (including a self-insured plan) to provide health care (directly or otherwise) to the College's employees, former employees, or the families of such employees or former employees.
- (6) Health Care Provider - The term "health care provider" means (a) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or (b) any other person determined by the Secretary of Labor, in regulations implementing the Act, to be capable of providing health care services.
- (7) Highly Compensated Employee - The term "highly compensated employee" means a salaried eligible employee who is among the highest paid ten (10) percent of the employees employed by the College within seventy-five (75) miles of the facility at which the employee is employed.
- (8) Parent - The term "parent" means the biological parent of an employee or an individual who stood *in loco parentis* (had day-to-day responsibility for and provided financial support) to an employee when the employee was a son or daughter. The term does not include an employee's parent-in-law.

- (9) Reduced Leave Schedule - The term "reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek or hours per workday of an employee.
- (10) Serious Health Condition - The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves (a) inpatient care in a hospital, hospice, or residential medical care facility or any subsequent treatment in connection with such inpatient care; or (b) continuing treatment by a health care provider for an incapacitating condition requiring absence from work, school, or other daily activities for three (3) calendar days or more, or which would likely result in such an absence if not treated by a health care provider; or (c) continuing treatment by a health care provider as such treatment is more fully described by the Secretary of Labor and regulations implementing the Act; or (d) prenatal care. Examples include heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, injuries caused by serious accidents on or off the job, ongoing pregnancy, severe morning sickness, the need for prenatal care, childbirth and recovery from childbirth.
- (11) Son or Daughter - The term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is (a) under eighteen (18) years of age; or (b) eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability that substantially limits one or more of his or her major life activities as defined in the Americans with Disabilities Act regulations at 29 CFR, Part 1630.
- (12) Spouse - The term "spouse" means a husband or wife, as the case may be, recognized or defined as such under applicable state law.

B. Eligibility - Only an "eligible employee" as defined in subparagraph A.(3) above is eligible for a family or medical leave under this guidance.

C. Relationship to Paid Leave Benefits - In the case of a family or medical leave of any type listed in Column A below, if the eligible employee has, under any benefit plan of the College then in effect, accrued any right to paid leave of a type described opposite such Column A type in Column B, then the eligible employee shall be required to substitute such accrued Column B paid leave for the entitlement to Column A family or medical leave to the extent that the eligible employee has accrued any entitlement to paid Column B leave. The substitution of any Column B paid leave entitlements shall be in the order in which such entitlements are listed in Column B. Except as specifically stated otherwise below, listed forms of Column B paid leave must be exhausted before subsequently listed forms may be taken; for example, for a health of relative leave, paid sick leave must be fully exhausted before use of paid personal or annual leave may commence.

| <u>Column A</u><br>Type of Family or<br>Medical Leave | <u>Column B</u><br>Types of Paid Leave Which Must (Except As<br>Stated Below To Be Optional) Be Substituted<br>to Extent Accrued  |
|---|---|
| Birth Leave   | Sick leave (substitution of paid, accrued sick leave for unpaid birth leave or unpaid placement leave is at employee's option (see Note below); personal leave or annual leave.   |
| Placement Leave                                       | Sick leave (substitution of paid, accrued sick leave for unpaid birth leave or unpaid placement leave is at employee's option (see Note, below); personal leave or annual leave.  |
| Health of Relative Leave                              | Sick leave; personal leave or annual leave.   |
| Health of Employee Leave                              | Sick leave; personal leave or annual leave. [if the leave circumstances potentially qualify for pay under the college's catastrophic disability leave benefit (see paragraph 14), and if the employee requests and is granted such catastrophic disability leave beginning on or after exhaustion of the employee's paid sick leave and annual leave, then the period with respect to which catastrophic disability leave is paid shall be substituted for any then remaining period of the employee's entitlement to unpaid health of employee leave.] |

Note: Health conditions arising from or connected with prenatal care, pregnancy, maternity, and complications therefrom, will normally fall within health of relative leave or health of employee leave, as the case may be, until the mother (or expectant mother) is no longer medically required to be absent from work or other daily activities. Any leave taken thereafter in connection with caring for the newborn child will normally fall within birth leave. Although the College cannot legally require the employee to use, and the employee is not legally entitled to elect to use, accrued sick leave with pay in lieu of unpaid birth (or placement) leave, the College will permit an employee to elect to use part or all of his or her accrued paid sick leave during any period of birth leave or placement leave, prior to using accrued personal or annual leave.

Example One: An eligible employee who is a non-exempt (hourly paid) staff member requests eight (8) weeks of unpaid health of relative leave to care for her seriously ill mother. The employee has accrued and not used two (2) weeks of paid sick leave and two (2) weeks of paid annual leave. The employee must take the first two (2) weeks as paid sick leave and then two (2) weeks as paid annual leave. The remaining four (4) weeks of requested health of relative leave would be unpaid.

Example Two: An eligible female employee has never used any FMLA leave. The employee is pregnant and requests twelve (12) weeks of leave in connection with having her baby. She has accrued but not used eight (8) weeks of paid sick leave and two (2) weeks of annual leave. The doctor releases the employee to return to work after seven (7) weeks. The first seven (7) weeks are a FMLA health employee leave, and seven (7) weeks of paid sick leave are substituted for those seven (7) weeks. (No election by the employee is permitted in this respect.) This leaves the employee with one (1) unused week of sick leave and two (2) weeks of annual leave. The employee remains entitled to the last five (5) weeks of the requested leave, as an FMLA birth leave. The employee may elect to take the eighth week as paid sick leave. If she so chooses, the eighth week will be paid as paid sick leave, the ninth and tenth weeks will be paid as annual leave, and the eleventh and twelfth weeks will be unpaid. (The employee will then have exhausted her accrued sick leave and accrued annual leave.) If the employee does not elect to use her one (1) remaining week of accrued sick leave during the eighth week, the eighth and ninth weeks will be paid as annual leave (no election being permitted by the employee in this respect), and the tenth through twelfth weeks will be unpaid, leaving the employee with one (1) week of accrued sick leave and no accrued annual leave. The employee will thus have used her full twelve (12) weeks of FMLA leave entitlement in either case.

Example Three: An eligible male employee has never taken any FMLA leave. His wife, who is not employed by the College, has a baby, and the employee requests twelve (12) weeks of FMLA birth leave. The employee has accrued but not used four (4) weeks of paid sick leave and two (2) weeks of annual leave. The employee may elect to use between zero hours and four (4) weeks of paid sick leave. Assuming he elects to take only the first three (3) weeks as paid sick leave (so that he will have one (1) week of paid sick leave remaining), the fourth and fifth weeks will be paid as paid annual leave (no election being permitted by the employee in this respect). The sixth through twelfth weeks would then be unpaid. This assumes the male employee is taking only birth leave. If, however, the employee's spouse had a serious health condition for the first eight (8) of the twelve (12) weeks, and her physician certified that the employee's presence was needed to care for his spouse during those eight (8) weeks, then for those eight (8) weeks the employee would be on an FMLA health of relative leave rather than on FMLA birth leave, and the College would require that the employee's accrued sick leave be substituted, on an hour-for-hour basis, for the health of relative leave, until the employee's accrued sick leave is exhausted. Thereafter, the employee's accrued annual leave would be substituted on an hour-for-hour basis during the fifth and sixth weeks. Once accrued annual leave is exhausted, the remaining weeks of leave would be unpaid.

#### D. General Requirements and Conditions of Leave

(1) Medical Certification - The College requires medical certification from a health care provider to support a request for health of employee leave or health of relative leave. The certification must state the date on which the serious health condition commenced, the probable duration of the condition, and the appropriate medical facts within the knowledge of the health care provider regarding the condition. In addition, for health of employee leave, the certification must include a statement that the

employee is unable to perform the functions of his or her position or must be absent from work for treatment. For a health of relative leave, the certification also must state that the employee is needed to care for his or her son, daughter, spouse, or parent and must include an estimate of the amount of time the employee is needed to provide such care. In its discretion, the College may require a second medical opinion at its own expense. If the first and second opinions differ, the College, at its own expense, may require the binding opinion of a third health care provider designated or approved jointly by the College and the employee.

- (2) Health of relative leave and/or health of employee leave may be taken on an intermittent or reduced leave schedule basis if such basis is certified by the health care provider to be medically necessary. If leave is requested on such a basis, however, the College may require the employee to transfer temporarily to an alternative position, having equivalent pay and benefits, which better accommodates recurring periods of absence or a part-time schedule. Birth leave and placement leave may not be taken on an intermittent or reduced leave schedule basis unless the employee and College mutually so agree.
- (3) The College may require the employee to obtain and provide subsequent recertifications from the health care provider at any reasonable interval allowed by law. However, recertifications will not be required by the College more often than every thirty (30) days, except where permitted in the circumstances described in the Labor Department regulations implementing the Act.
- (4) The College may request documentation of the *in loco parentis* relationship for placement leave or health of relative leave.

#### E. Notification and Reporting Requirements

When the need for leave is foreseeable, such as a birth leave, placement leave, or planned medical treatment, the employee must provide reasonable prior notice to the College. Except where medical or other circumstances make it impossible to do so, this shall require at least thirty (30) days' notice by the employee of the need for leave under this procedure. Where it is not possible to give thirty (30) days' notice, notice must be given to the College as soon as practicable, which means within two (2) business days after the need for leave becomes known to the employee. Where the need for health of relative leave or health of employee leave is foreseeable based on planned medical treatment, the employee must also make a reasonable effort to schedule the treatment so as not to unduly disrupt College operations. While on health of employee leave, the employee will be required to report periodically on his or her leave status and intention to return to work.

#### F. Status of Employment Benefits during Leave of Absence

- (1) When an eligible employee is granted an approved unpaid leave under this guidance, the College will maintain the employee's coverage; that is, pay any portion of the

premium normally paid by the College for active employees of the same classification as the eligible employee in question under any group health plan maintained by the College. This shall continue for the duration of the employee's unpaid leave under this guidance, up to the durational limit of the employee's leave entitlement under this guidance. **The employee will be responsible for paying any portion of the group health plan premium normally paid by actively working employees of the employee's classification.** The employee's group health plan coverage will be maintained at the level and under the conditions coverage would have been provided if the employee had continued in active employment continuously for the duration of such leave.

Example: If the employee had family health coverage prior to the leave, the College will continue paying the College-paid portion of the family coverage premium. No "cash-in-lieu" of health plan coverage will be paid to any employee with respect to any full-month period of unpaid leave taken under the FMLA Guidelines. If catastrophic leave is granted, the employee will be considered on "paid leave" for cash-in-lieu purposes during the period of catastrophic leave.

- (2) In order to retain any insurance coverage or coverages which are not group health plan coverage or group basic life insurance or group long-term disability insurance during the leave, **any eligible employee who is granted an approved unpaid leave under this guidance must arrange to pay all portions of the premium or premiums; that is, both the portion the College would normally pay for an active employee and any portion the employee would normally pay to the College during the period of the leave.**
- (3) The College reserves the right to suspend insurance coverage if the employee's premium payment is late by thirty (30) days or more. Coverage will be reinstated when the employee returns to work status.
- (4) If the employee fails to return to work upon completion of an approved unpaid leave under this guidance, the College may recover from the employee and the employee shall repay the College the cost of any payments made by the College for any of the employee's insurance coverages, unless the failure to return to work was for reasons beyond the employee's control, or because of the continuation, recurrence, or onset of a serious health condition which entitles the employee to a health of relative leave or health of employee leave under this guidance. For purposes of this subparagraph, only an employee who returns to work for at least thirty (30) calendar days will be considered to have "returned" to work.
- (5) Benefit entitlements based upon length of service will be calculated as of the last paid work day prior to the start of any period of unpaid leave of absence under this guidance. During periods of unpaid leave allowed under this guidance, the employee will not accrue or earn employment benefits such as vacation pay, sick pay, retirement contributions, etc. However, benefits earned or accrued up to the day on which the leave begins will not be lost, except to the extent paid forms of accrued leaves are substituted for unpaid leaves under this guidance.

## G. Return from Leave

- (1) On expiration of a leave approved under this guidance, the employee will be restored to active status and to the position he or she would have had on the date of restoration if the leave had not been taken. (Restoration to employment may be denied if the employee fails to return to work at the end of the period of entitlement to family or medical leave, or if the employee's employment would have terminated during the leave period for reasons unrelated to the taking of the leave, such as elimination of the employee's position, expiration of grant funding for the employee's position, expiration of temporary appointment, etc.) The College reserves the right to assign the employee to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

Exceptions: (a) The College may deny restoration to employment for fraudulent procurement or use of leave approved under this guidance. (b) The College may also deny restoration to employment to a highly compensated employee if the College notifies the employee in writing, at the earlier of the time the leave commences or the time it is requested, that the employee is a highly compensated employee. (Labor Department regulations also require the College to provide additional information to such an employee at that time.) Restoration of such an employee to employment at the end of leave will be denied only if the denial of restoration is necessary to prevent substantial and grievous economic injury to the College, and the College notifies the employee in writing of its intent to deny restoration on that basis at the time the College determines such an injury would occur, and (in any case in which the leave has commenced) the employee elects not to return to work after receipt of the notice. In such a case, although restoration to employment may be denied to the highly compensated employee, the employee shall remain eligible for unpaid leave and for the continued maintenance of coverage by the College under any pertinent group health plan (without any liability on the part of the employee to refund group health plan premiums paid by the College) for the balance of the employee's unexpired period of leave entitlement under this guidance.

- (2) Any employee who takes a health of employee leave under this guidance shall, as a condition of restoration to employment, if the leave was for a period of two or more workweeks, provide the College with a certification of a health care provider that the employee is able to return to work.

## H. Procedures

- (1) Completion of *Absence and Leave Request Form* - An *Absence and Leave Request* form must be originated by the employee. The form should be completed in detail with appropriate documentation, signed by the employee, submitted to the immediate supervisor and forwarded to the Human Resources Office. Unless precluded by circumstances, the form must be submitted to the supervisor at least thirty (30) days in advance of the requested commencement date of the leave. (See subparagraph E.)

- (2) All requests for family or medical leaves of absence due to serious health conditions must include the health care provider's certification, as required by subparagraph 15D of this procedure, if the circumstances permit. Otherwise, the employee must submit such certification as soon as practicable, which normally will mean within fifteen (15) days after any request for such certification.
- (3) The College will notify the employee of the relevant dates of paid and unpaid Family and Medical Leave Act leave, benefits, and obligations, and status as a highly compensated "key" employee, if applicable.
- (4) For unpaid leaves beyond twelve (12) weeks, refer to Procedures Memorandum VI-1.

#### I. Effect of Labor Agreement or State Law

All provisions of this procedure shall apply except as modified by or inconsistent with any applicable labor agreement or the law of the state or local jurisdiction in which the employee is employed.

#### J. Notice to Employees

The College will post the appropriate notice in appropriate locations to advise employees of their general rights under the Act. In addition, the College will comply with the notice requirements set forth in Labor Department regulations (29 CFR § 825.301). The College will provide a copy of the FMLA Fact Sheet to each employee and thereafter provide copies to new employees at or shortly after the time of hire.

The Human Resources Office will maintain appropriate documentation of the furnishing of such information to employees. When an employee requests or gives notice of the need for family or medical leave under this procedure, the Human Resources Office shall provide the employee with the notification and information specified by Labor Department regulations, 29 CFR § 825.301(c).

#### K. Family Military Leave

The federal Family and Medical Leave Act (FMLA) entitles eligible employees to take leave for a family member's covered service in the Armed Forces due to a "Qualifying Exigency" and to care for a covered service member with a "serious illness or injury." This section supplements the existing FMLA policy and provides general notice of employee rights to such leave. Except as mentioned below, an employee's rights and obligations to "Qualifying Exigency" and "Military Caregiver" Leave are governed by the existing FMLA policy.

- (1) Employee Entitlement to Family Military FMLA provides eligible employees unpaid leave for any one, or for a combination, of the following reasons:
  - A "qualifying exigency" arising out of a covered family member's active duty or

call to active duty in the Armed Forces in support of a contingency plan. Qualifying Exigency Leave may be taken only for the following non-medical, non-routine activities: (a) short-notice deployment, (b) military events and related activities, (c) childcare and school activities, (d) financial and legal arrangements, (e) counseling, (f) rest and recuperation, (g) post-deployment activities, and (h) additional activities where the employer and employee agree to the leave; and/or

- Under “Military Caregiver Leave” to care for a covered family member who has incurred an injury or illness in the line of duty while on active duty in the Armed Forces provided that such injury or illness may render the family member medically unfit to perform duties of the member’s office, grade, rank, or rating. With regard to veterans, the serious injury or illness must have manifested itself within five years preceding the date on which the veteran undergoes the medical treatment or received the therapy that necessitates the leave.

#### (2) Duration of Family Military FMLA

- When leave is due to a “Qualifying Exigency,” an eligible employee may take up to 12 workweeks of leave during any 12-month period.
- When leave is to care for an injured or ill servicemember or veteran, an eligible employee may take up to 26 workweeks of leave during a single 12-month period to care for the servicemember or veteran. Leave to care for an injured or ill servicemember or veteran, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period.
- Family Military FMLA runs concurrent with other leave entitlements provided under federal, state, and local law.

#### (3) Leave under State of Nebraska Military Leave

The College’s policy is to comply with Nebraska State law in any circumstance where it applies to the employees of Metropolitan Community College.

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