

POLICY: 6Hx28: 3D-06.1



Responsible Official: Vice President,
Organizational Development and Human
Resources

Specific Authority: 1001.64, F.S.
Law Implemented: Family and Medical Leave
Act of 1993 (P.L. 103-3) 107 Stat.6; Dept. of
Labor, Wage and Hour Division, Rules 29 CFR
Part 825

Effective Date: 04-16-2013

Family/Medical Leave

Policy Statement:

- I. Under the Family and Medical Leave Act (“FMLA”) full-time and part-time employees of Valencia College (“College”) who have worked for the college for a total of twelve (12) months and have worked 1,250 hours within the year preceding commencement of the leave are entitled to take within any twelve (12) month period 1) up to twelve (12) weeks of unpaid family/medical leave and/or qualifying exigency military leave (“Military Exigency Leave”), 2) up to twenty-six (26) weeks of military family leave to care for a family member or veteran with medical conditions related to such service (“Military Caregiver Leave”). Employees who qualify for leave for reasons specified in 1 and 2 above are limited to a combined total of 26 weeks of FMLA leave for all qualifying reasons during that year. Unpaid leaves are not included when calculating whether 1,250 hours have been worked. A twelve-month period is defined as any rolling twelve-month period measured backward from the date that leave is used. The twelve (12) months of employment do not have to be consecutive, however a continuous break in service of seven (7) years or more will initiate a new period for earning twelve (12) months qualifying service.
- II. Leave may be taken for the following reasons:
 - A. the birth or bonding of a child to the employee within one year of birth;
 - B. the placement of a child with the employee for adoption or foster care within one year of placement;

- C. in order to care for the spouse, child, or parent of the employee, if such family member has a serious health condition; or
- D. because of a serious health condition which renders the employee unable to perform the functions of the position of such employee.
- E. Military Caregiver Leave to care for a spouse, child, parent, or next-of-kin who is a member of the Armed Forces, including the National Guard and Reserves, who is undergoing medical treatment, recuperation, or therapy, is on out-patient status or is on the temporary disabled retired list due to a serious injury or illness that occurred while on active duty This leave can only be taken once during a single 12 month period while the employee works for the same employer , but that requirement is per-service member and per-injury or illness. Husbands and wives working for the same employer are limited to a combined total of 26 weeks; or
- F. Qualifying Exigency Leave for a covered spouse, son, daughter, or parent to deal with “qualifying exigencies” caused by a call to active duty or has been notified of an impending call or order to covered active duty.

Covered active duty means:

- for members of the Regular Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; or
- for members of the Reserve components of the Armed Forces (members of the National Guard and Reserves), duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.

Qualifying Exigency Leave may be taken:

- In short notice deployment situations, where a covered military member is notified of an impending call or order to active duty seven (7) or fewer days from the date of deployment, in which case an eligible employee may take military exigency leave for a period of seven (7) days beginning on the date when the covered military member is notified of the impending deployment to address any issue that arises from the short-notice deployment.
- To attend military events, ceremonies, or programs sponsored by the military that are related to the member’s deployment, or to attend similarly related family support or assistance programs or informational briefings sponsored by the military, one of its service organizations, or the American Red Cross.
- For certain childcare and school activities necessitated by active duty or the call to active duty status of a covered military member, including to arrange for alternative childcare, to provide childcare on an urgent, emergency need (but not routine, regular, or everyday) basis, to enroll or transfer a child in a new school

or day care facility.

Note: The employee taking FMLA qualifying exigency leave does not need to be related to the military member's child. However, (1) the military member must be the parent, spouse, child of the employee taking FMLA leave, and (2) the child must be the child of the military member (including a child to whom the military member stands in loco parentis).

- For certain activities arising from the military member's covered active duty related to are of the military member's parent who is incapable of self-care, such as arranging for alternative care, providing care on a non-routine, urgent, immediate need basis, admitting or transferring a parent to a new care facility, and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers.
- Note: The employee taking FMLA qualifying exigency leave does not need to be related to the military member's parent. However, (1) the military member must be the parent, spouse, child of the employee taking FMLA leave, and (2) the parent must be the parent of the military member (including an individual who stood in loco parentis to the military member when the member was a child).
- To make or update financial or legal arrangements to address a covered military member's absence while on active duty, including preparing and executing financial and healthcare powers of attorney, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), or obtaining military identification cards.
- To attend counseling provided by someone other than a health care provider for the employee, the covered service member or his or her child, if the need for counseling is due to the active duty.
- To take up to 15 calendar days of leave to spend time with a covered military member who is on a short-term, temporary Rest and Recuperation leave during a period of deployment.
- To attend certain post-deployment activities, such as arrival ceremonies and reintegration briefings and any other official ceremony or program sponsored by the military for ninety (90) days following the termination of the active duty and to address issues arising from the death of a covered military member, including attending the funeral.
- For certain additional activities arising out of a covered military member's active duty or call to active duty where the employer and employee both agree on the timing and duration of the leave.

III. An employee shall use paid leave as appropriate, i.e., sick leave, sick leave pool, personal leave, and vacation leave prior to using unpaid leave, as determined by the Vice President of Human Resources and Diversity or his/her designee. Both paid and unpaid leave are counted against the twelve (12) week Family and Medical Leave entitlement, the twenty-six (26) week Military

Caregiver Leave, and twelve (12) week Qualifying Exigency Leave. Employees do not accrue paid leave while in an unpaid status.

- IV. For full-time employees on Family and Medical Leave, Military Caregiver Leave or Qualifying Exigency Leave, the College will maintain the employee's group health benefits and basic life insurance policy in accordance with Valencia College's Insurance: Comprehensive Medical and Life Program Policy.
- V. Employees who are on Family and Medical Leave, Military Caregiver Leave or Qualifying Exigency Leave are subject to disciplinary actions, if warranted as a result of not complying with college policies.
- VI. Upon return from leave, employees will be restored to their original or equivalent position. Employees who would have been terminated, but for the leave, or who are unable to perform the essential functions of the job, will not be reinstated. The Americans with Disabilities Act reasonable accommodations may apply those who return from leave and are no longer able to perform the essential functions of the job.
- VII. Employees are expected to report to work on the first regular business day following the end of the leave period. Failure to do so shall be deemed an abandonment of the employee's job. If the need for such leave is less than originally set forth in the employee's request and medical certification, employees are expected to return to work as soon as the need for leave concludes.

Procedure:

- I. When an employee becomes aware of the need for FMLA leave, the employee should contact Human Resources either in person, telephonically or via e-mail or through their supervisor/manager. Upon receipt of the request, Human Resources will determine whether the employee meets service requirements and established qualifying criteria for leave. Requests for FMLA leave shall be made at least thirty (30) days in advance where the leave is foreseeable. Where the need for leave is foreseeable and employees do not comply with the thirty (30) day advance notice, employees may have their leave delayed and may be required to explain why it was not practicable for them to give a full thirty (30) day notice. This notice period does not apply to requests for military leave. Where the leave is not foreseeable the request should be made as soon as practicable.
- II. Where the need for leave is immediate, and upon receipt of sufficient information supporting the employee's request, Human Resources will then make a preliminary designation as appropriate. A final determination will be made upon conclusion of the process described in Section C below and receipt of all supporting documentation.
- III. In all cases, Human Resources will forward the following documents to the employee for completion within five (5) business days of the receipt of the request for leave:
 - A. Notice of Eligibility & Rights;

- B. Application for Family and Medical Leave. If an employee is taking leave under the “three (3) consecutive calendar days of incapacity plus two (2) visits to a healthcare provider” definition, the two (2) visits must occur within thirty (30) days of the period of initial incapacity, absent extenuating circumstances. If an employee is taking leave under the “three (3) consecutive days of incapacity plus a regimen of continuing treatment” definition, then the first visit to a health care professional must occur within seven (7) days of the initial incapacity;
- C. Notice of Intent to Return to Work;
- D. Certification of Health Care Provider. Designated Human Resources representatives may contact an employee’s health care provider to clarify and authenticate a medical certification presented in connection with an FMLA leave request (as appropriate);
- E. Certification of Qualifying Exigency (as appropriate);
- F. Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave (as appropriate);
- G. Sick Leave Pool Form (if eligible).

Failure to return any of these documents within twenty (20) calendar days of the postmarked date of the College’s request may result in denial of the leave until such time as the forms are provided.

Employees will be notified in writing if there are any problems with the paperwork that was received or if additional information is required and will be given seven (7) days to supplement the certification.

At the beginning of the leave period and every thirty (30) days thereafter, employees shall be required to provide written verification of their intent to return to work.

- IV. Upon determination that the leave qualifies FMLA, Military Caregiver or Qualifying Exigency Leave qualifying, Human Resources will notify the employee within five (5) business days that the leave is so designated and will be counted as the appropriate type of leave.
- V. The College reserves the right to require the employee to provide a second or third medical opinion regarding a serious health condition of the employee or a family member in accordance with the FMLA. The College will select the health care provider to be consulted for the second medical opinion. The college will pay the expenses.
- VI. Intermittent or reduced schedule leaves are available only when certification from a healthcare provider establishes that such leave is medically necessary. Intermittent or partial leave schedules are subject to approval by the college unless the employee provides certification that the schedule is medically necessary. The College reserves the right to temporarily transfer an employee requesting intermittent leave or partial leave to an alternate position which better accommodates the recurring periods of leave.

- VII. Employees on Family and Medical Leave for a serious health condition for themselves, a spouse, child, or parent may be required while on leave to recertify that the serious health condition exists if: 1) an employee requests an extension of leave; 2) circumstances described by the original certification have changed; or 3) the College receives information which casts doubt upon the continuing validity of the certification.
- VIII. Leave extensions may be requested in writing and must be accompanied by medical certifications, as noted above, that the extension is required. Such requests for extension must be submitted as soon as the need for an extension is known and if foreseeable, at least two weeks prior to the end of the original leave period.
- IX. Employees with continuing, open-ended conditions are required to submit a medical recertification every six months or on a more frequent basis if circumstances change. Periodic visits to a healthcare provider for chronic serious health conditions means at least two visits to a healthcare provider per year. Employees with a serious health condition which extends beyond a single leave year are required to provide a medical certification every new leave year.
- X. Employees shall make a reasonable effort to schedule any treatments so as not to disrupt the College's operations.
- XI. Where an employee has requested leave for his/her own serious health condition, the employee will be required to provide fitness-for-duty certification that he/she is able to resume work. Human Resources may require that fitness-for-duty certifications specifically address the employee's ability to perform essential job functions, if the employer provided a list of such essential job functions no later than when they provided the employee with the FMLA designation notice. Additionally, where reasonable job safety concerns exist, up to once every thirty (30) days, the College may request a fitness-for-duty certification after each absence taken on an intermittent or reduced leave schedule.

Related**Documents/Policies:**

See Policy 6Hx28:3C-08 "Insurance: Comprehensive Medical and Life Program"

Policy**History:**

Adopted 2-16-94; Amended 11-20-96; Formerly 6Hx28:07-38; Amended 4-16-13

Procedure**History:**

Adopted 2-16-94; Amended 11-20-96; Formerly 6Hx28:07-38; Amended 4-16-13