

FAMILY AND MEDICAL LEAVE (FMLA)

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Responsible Administrator: Vice President for Human Resource Management and Labor Relations

Responsible Office: Human Resource Management and Labor Relations

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Policy Statement

This policy applies to all college employees who are eligible for qualifying leave under the Family and Medical Leave Act (FMLA). The FMLA entitles eligible employees to take unpaid, job-protected leave for specified reasons. At their option, eligible employees may take FMLA leave as *paid* leave by utilizing their accrued sick, vacation, and personal time as they deem appropriate.

Reason for the Policy

The Fashion Institute of Technology (“the college”) recognizes that, at times, employees may require a leave of absence for qualified family or medical situations. The college established the Family and Medical Leave Policy in compliance with the federal Family and Medical Leave Act of 1993, as amended, which requires covered employers to allow eligible employees to take up to 12 work weeks of unpaid, job-protected leave in a 12-month period for qualified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Eligible employees have the option to take unpaid leave or, at their discretion, to utilize their available paid leave for their FMLA leave. If a leave qualifies for both FMLA leave and NYS Paid Family Leave (NYS PFL; applicable to FIT Student Housing Corporation employees only), these leaves will run concurrently.

Amendments to the FMLA by the National Defense Authorization Act expanded the FMLA to allow the following:

- Up to 12 work weeks of unpaid, job-protected leave in a 12-month period for any Qualifying Exigency arising from the fact that the employee’s Spouse, Child, or Parent who is a Military Member is on Covered Active Duty or has been notified of an impending call or order to Covered Active Duty.
- Up to 26 work weeks of unpaid, job-protected leave during a single 12-month period to care for a Covered Service Member with a serious injury or illness if the eligible employee is the service member’s Spouse, Child, Parent, or Next of Kin.

Who is Responsible for this Policy

- Office of Human Resource Management and Labor Relations

Who is Affected by this Policy

- All eligible employees of the college

Definitions

- **Child:**
 - A biological, adopted, or foster Child, a stepchild, a legal ward, or a Child of a person standing *in loco parentis*, who is either under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence. For the purpose of Qualifying Exigency leave, a Child on Covered Active Duty refers to a Child of any age.
 - Persons who are "*in loco parentis*" include those with day-to-day responsibilities to care for or financially support a Child where the individual intends to assume the responsibilities of a Parent with regard to the Child or, in the case of an employee, a person who had such responsibility for the employee when they were a Child. A biological or legal relationship is not necessary.
 - **Qualifying exigency leave only:** The employee does not need to be related to the Military Member's Child or Parent. However, the Military Member must be the Parent, Spouse, or Child of the employee; and, the Child must be the Child of the Military Member (including a Child to whom the Military Member stands *in loco parentis*), and; 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).

- **Continuous Leave:** An approved leave of absence for a specified period, with no break in leave within the period.

- **Covered Active Duty:**
 - For members of the Regular Armed Forces, Covered Active Duty is duty during deployment of the member with the Armed Forces to a foreign country.
 - For members of the Reserve components of the Armed Forces (members of the National Guard and Reserves), Covered Active Duty is duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation.
 - Deployment to a foreign country means deployment to areas outside the United States, the District of Columbia, or any Territory or possession of the United States. It also includes deployment to international waters.

- **Covered Service Member:** A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, or a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

- **Eligible Employees**
 - Work at a location where an organization employs 50 or more employees within 75 miles, *and*
 - Must have worked for the employer for at least 12 months as of the date the FMLA leave is to start,¹ *and*

¹ In terms of calculating the length of work service, employees do not have to be employed for a consecutive, 12-month period. Part-time, temporary, or seasonal work generally counts towards the 12 months of employment,

- Must have worked for the employer at least 1,250 work hours during the 12 months prior to the start of their FML.
- **Immediate Family Member:** An employee's Spouse, Child, or Parent, including anyone designated in loco parentis (not including Parents-in-law or employee's domestic partner).
- **Intermittent Leave / Reduced Leave Schedule:** Intermittent leave is medically necessary leave taken in separate blocks of time for a single qualifying reason. A reduced leave schedule is medically necessary leave that reduces an employee's usual number of working hours per workweek, or hours per workday. For example, intermittent leave or a reduced leave schedule may be needed:
 - To attend periodic appointments for medical treatment, care for an immediate family member with a serious health condition, or bond with a newborn child or a newly placed adopted or foster child.
 - For absences where the employee is unable to perform the essential functions of their position because of a chronic serious health condition.
- **Military Caregiver Leave:** Leave when a family member is a current, covered service member or covered veteran with a serious injury or illness.
 - **For a Current Service Member:** an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating.
 - **For a Covered Veteran:** an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and certain other criteria defined in the FMLA.
- **Military Member:** An employee's Spouse, Child, or Parent who is a member of the Armed Forces (including the National Guard and Reserves) and who is on Covered Active Duty or has been notified of an impending call or order to Covered Active Duty.
- **Next of Kin:** Nearest blood relative other than the Covered Service Member's Spouse, Parent, or Child in the following priority:
 - Blood relatives granted legal custody, siblings, grandparents, aunts, uncles, and first cousins unless the service member has specifically designated, in writing, another blood relative for purposes of Military Caregiver Leave under the FMLA.
- **Parent:** A biological, adoptive, step, or foster parent, or someone who stood in loco parentis to the employee when the employee was a Child. This term does not include Parents "in-law."
 - **Qualifying exigency leave only:** The employee does not need to be related to the Military Member's Parent. However, the Military Member must be the Parent, Spouse,

and if an employee is maintained on the payroll for any part of a week, that week counts as a week of employment.

or Child of the employee and 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).

- **Qualifying Exigency:** A Qualifying Exigency leave may arise from the foreign deployment of the employee's Spouse, Child, or Parent. There are nine broad categories of qualifying exigencies:
 - Issues arising from short-notice deployment.
 - Attending military events and activities related to the member's deployment.
 - Attending to certain Childcare-related activities arising from the Military Member's Covered Active Duty.
 - Certain activities arising from the Military Member's Covered Active Duty related to the care of the Military Member's Parent who is incapable of self-care.
 - Financial and legal arrangements to address a Military Member's absence while on Covered Active Duty.
 - Attending counseling for the employee, the Military Member, or the Child of the Military Member arising from the Covered Active Duty of the Military Member.
 - Up to 15 calendar days of leave for time with a Military Member who is on short-term, temporary rest and recuperation leave during deployment.
 - Certain post-deployment activities.
 - Any other event the employee and employer agree with is a Qualifying Exigency.

- **Serious Health Condition:** An illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice, or a residential care facility, or continuing treatment by a healthcare provider. This definition is intended to cover conditions or illnesses that affect an employee's health to the extent that they must be absent from work on a recurring basis, or they or their Immediate Family Member experience a period of incapacity of more than three (3) consecutive calendar days and require a regimen of continuing treatment.

- **Spouse:** A husband or wife as defined or recognized in the State where the individual was married and includes individuals in a same-sex marriage or common law marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States if the marriage could have been validly entered into in at least one State.

Principles

Employees who may need Family and Medical Leave ("FML") or who have questions about taking a leave **must** consult with Human Resources and should provide as much notice as possible of their need for leave. Human Resources is solely responsible for determining an employee's eligibility for Family and Medical Leave.

FIT is prohibited from discriminating or retaliating against any employee for exercising their rights under the FMLA.

- **Leave Entitlement**

Consistent with FMLA regulations, qualifying leave may be taken for the following reasons:

- **For Eligible Employees:**

Up to 12 work weeks of leave in a rolling 12-month period² for:

- The birth of a Child or placement of a Child with the employee for adoption or foster care;
- The care for an Immediate Family Member who has a Serious Health Condition; and
- A Serious Health Condition that renders the employee unable to work.

- **For Reasons Related to a Family Member's Service in the Military**

- Military Caregiver Leave: 26-week FMLA leave entitlement in a single 12-month period beginning the first day that leave is taken.
- Qualifying Exigency Leave: Up to 12 workweeks of leave in a rolling 12-month period.

Employees should reference FIT's other policies, including, but not limited to, its Reasonable Workplace Accommodations policy, and [NYS PFL](#) (FIT Student Housing Corporation employees only) for information on other types of leave or accommodations. FIT's Office of Human Resource Management and Labor Relations is available to assist employees in assessing their leave options.

FMLA leave is a statutorily defined medical leave. It is separate and distinct from any term and condition of employment contained within the collective bargaining agreement (CBA) between FIT and the UCE of FIT.

An employee on continuous or intermittent FMLA leave, or on a reduced leave schedule, is **not** authorized to work during their approved leave period(s).

Any employee seeking to work a full workday falls outside of the scope of FMLA leave.

- **Notification of leave**

Failure to provide proper notice about a leave to HR may result in a delay of your leave or discipline for unauthorized absence.

- **Foreseeable or Planned Family/Medical Leave of Absence:**

- Employees should provide as much notice as possible of their need for leave but must provide at least thirty (30) calendar days *advance* notice.

- **Unforeseeable or Unplanned Family/Medical Leave of Absence:**

- When the need for the leave is not foreseeable, employees must provide notice to HR as soon as possible and practicable.

² For purposes of determining the FML time available, the "lookback" method is used. Based on the start date of the current leave request, the lookback period is the 12 months preceding that date. Any FML time already taken in that period is deducted from the 12-week FML entitlement.

- Employees must provide such notice when they or their Immediate Family Member have been rendered incapacitated for a period of more than three (3) consecutive calendar days due to an unforeseen illness or condition and will require subsequent treatment relating to the same illness or condition.
- **Returning to Work**

Employees who do not return to work upon their scheduled return date, and who have not received an approved extension of leave, may be disciplined in accordance with the Collective Bargaining Agreement or college policy, as applicable, up to and including termination, and/or may be considered to have voluntarily resigned from their employment.
- **Leave Extensions**

Depending on the circumstances, the college will grant or deny such a leave extension in accordance with applicable law. A leave extension beyond the maximum FMLA entitlement period of 12 work weeks in a 12-month period is no longer protected under the FMLA.
- **Intermittent Leave / Reduced Leave Schedule**
 - Eligible candidates approved for FMLA leave may utilize up to 12 weeks of leave intermittently or on a reduced leave schedule.
 - If an employee is granted authorization to work intermittently and/or on a reduced leave schedule, there must be an identified period of time during the impacted work days during which the employee will be:
 - present at their approved work location, and
 - able to perform their essential job functions
 - All intermittent FMLA leave or reduced leave schedule requests will be assessed by Human Resources in collaboration with the employee and their respective supervisor(s).
- **Remote Work**
 - An employee on approved continuous or intermittent FMLA Leave, or on a reduced leave schedule, is **not** authorized to work remotely.
 - However, the college retains the right, in its sole discretion, to approve remote work during an employee's normal work scheduled hours on a case-by-case basis. This case-by-case assessment will include the employee's input as to their available schedule to work remotely and the input of their respective supervisor(s); this assessment will include, but not be limited to:
 - an assessment of the current work requirements and needs of the employee's department;
 - the employee's ability to fulfill their currently assigned essential job functions remotely; and
 - the employee's ability to designate a reasonable period of time during their assigned work schedule where the employee will be available to respond to inquiries and perform their job essential functions.

Responsibilities

- **Human Resources:**
 - Provide the employee with the FMLA Eligibility, Rights and Responsibilities Notice once the leave request is received.
 - Review the leave request and provide the employee with the Healthcare Provider Certification Form.
 - Engage with the employee, as needed, to review and verify all information provided in the Healthcare Provider Certification Form.
 - HR is responsible in all circumstances for designating leave as qualified under the FMLA. If the leave qualifies, HR provides a Designation Notice to the employee which informs the employee that the requested leave will be designated as FMLA leave and sets out the requirements applicable while the employee is on leave.
 - Inform the employee's supervisor of FMLA leave approval; apprise the supervisor of changes such as leave extension or early return to work.
 - Ensure that a proper return to work clearance letter is received from the employee.

- **Supervisors:**
 - Upon receipt of information of a potential leave involving time off (a reduced leave schedule, intermittent leave days, or continuous leave) for a Serious Health Condition, advise the employee to refer to this policy and inform Human Resources.
 - Confer with Human Resources about a temporary backfill of the position while an employee is on leave.
 - Refer all FMLA-related inquiries to Human Resources.
 - Approve employee leave reports (full-time employees) or timesheets (part-time employees, if on paid leave only) while they are on leave.

Procedures

- **Requesting Planned Family and Medical Leave, and Approval**
 - Employees seeking continuous leave should request it through the [FIT Leave of Absence Request Form](#).
 - Upon submission of this form, employees will be provided with the *FMLA Healthcare Provider Certification Form*. Employees and their healthcare provider must complete this additional form and return to Human Resources within 15 calendar days of the leave request. The completed form must include the anticipated duration of leave. If employees are unable to meet the 15 calendar day deadline to submit their completed *FMLA Healthcare Provider Certification Form*, despite their diligent and good faith efforts, Human Resources will allow additional time to submit the certification.
 - Employees must inform their supervisor that leave has been requested and the estimated start and end dates as anticipated by their medical provider(s). Specific medical information, diagnosis, prognosis, etc. is confidential and not to be shared with the supervisor or others who do not have a legitimate need to know.
 - Human Resources reviews the leave request and sends the employee the FMLA Eligibility, Rights and Responsibilities Notice within five (5) business days of receiving the leave request; Human Resources also reviews the FMLA Healthcare Provider Certification Form and determines if the requested leave qualifies under the FMLA.

- Human Resources provides the FMLA Designation Notice to the eligible employee within five (5) business days that confirms whether FML is approved or if additional information is required. If additional information is needed, the employee is given seven (7) additional calendar days to provide such information to Human Resources.
 - The employee and Human Resources meet, as needed, to review necessary leave-related items, including the availability of banked time, to determine if leave may be paid.
- **Requesting an Unplanned Family and Medical Leave of Absence**
 - When the need for the leave is not foreseeable, including in the case of military exigency family leave, employees must provide notice as soon as practicable. Employees must provide sufficient information for the college to determine if the continuous or intermittent leave is covered by the FMLA and the anticipated timing and duration of the leave. Sufficient information may include that:
 - the employee is unable to perform job functions,
 - a family member is unable to perform daily activities,
 - a need for hospitalization or continuing treatment by a healthcare provider or circumstances supporting the need for military family leave.

Employees also must inform the college if the requested leave is for a reason for which FMLA leave was previously taken or certified. Failure to provide proper notice may result in a delay of leave or discipline for unauthorized absence.

- The employee should:
 - Complete the Leave of Absence Request Form (see Related Documents); and
 - Communicate the need for the FMLA request to their supervisor as soon as possible.
 - After a request for leave, the college will provide notice of employees' eligibility for leave.
 - If an employee is unable to contact Human Resources or communicate the need for the request to their supervisor, the employee's designee should notify the college.
 - Depending upon the circumstances, full-time employees may, after exhausting all sick time, be entitled to receive Short-Term Disability benefits.
- **While On Leave**
 - Employees must check their FIT email for correspondence from Human Resources and respond as needed.
 - Employees must continue to complete and submit leave reports (full-time employees). Part-time employees must continue to complete and submit timesheets if on paid leave.
 - **Leave Extensions**
 - Employees who have been granted FMLA leave of fewer than 12 work weeks in a 12-month period must notify Human Resources via official FIT email if they need an extension to their approved leave period. The employee will be asked to provide Human Resources with an updated, complete FMLA Healthcare Provider Certification.

- Employees must notify Human Resources via official FIT email should they require an extension of their FMLA leave beyond the designated 12 work weeks within a 12-month period.
 - While such an extension of leave is no longer protected under the FMLA, other laws and college policies may be applicable. Under these circumstances, HR will work closely with employees to determine if additional leave is available.
- **Returning to Work**

After up to 12 weeks of FMLA leave, the college will reinstate employees to their same, or an equivalent, position with no loss in salary, benefits or other terms and conditions of employment. Employees on medical leave who are permitted to remain on leave past 12 weeks may or may not be reinstated, depending upon the circumstances and any other employment-related protections (i.e., Collective Bargaining Agreement).

The following actions must be taken prior to returning to work:

- At least two (2) business days before their expected return-to-work date, employees on FMLA leave must email Human Resources using their FIT email address to confirm that they will return to work on the approved return date.
 - If, due to changed circumstances, the amount of leave originally anticipated is no longer necessary and the employee can arrange an early return to work, the employee must inform Human Resources of these changed circumstances at least two (2) business days before their new return-to-work date.
- At least two (2) business days before their expected return-to-work date, employees on FMLA leave due to their own Serious Health Condition must submit a return-to-work clearance letter prepared by their healthcare provider, certifying that they are able to resume work.

Employees who do not return to work upon their scheduled return, or who have not received an approved extension of leave, will be considered to have voluntarily resigned from their employment. Employees who would have been affected by a reduction in force, or otherwise subjected to termination of employment had they not taken leave, are not entitled to reinstatement.

- **Assigning A Designee:**
 - When employees are unable to complete a request for leave due to incapacity, they must assign a designee who will act on their behalf to notify the college of the need for leave and communicate with HR throughout the leave period.
 - HR will copy the employee on any communication with their designee.
 - HR will manage the employee's leave reporting in consultation with the designee.

Violations

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided under FMLA or discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA. An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer to enforce such rights.

Related Policies

- [Reasonable Workplace Accommodations](#)

Related Documents

- [FIT Leave of Absence Request Form](#)
- [Certification of Healthcare Provider for Employee's Serious Health Condition](#)
- [Certification of Healthcare Provider for Family Member's Serious Health Condition](#)

Contacts

- **Office of Human Resource Management and Labor Relations**
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