

# FAMILY AND MEDICAL LEAVE (FMLA)

Policy HR004

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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

The college recognizes that from time to time employees may require a leave of absence for certain family or medical situations. This policy applies to all eligible employees of the college. The FMLA entitles eligible employees to take unpaid, job-protected leave for specified 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.

## Reason for the Policy

Fashion Institute of Technology (“FIT” or “the college”) established the Family and Medical Leave Policy in compliance with the federal Family Medical Leave Act of 1993 (“FMLA”). The FMLA became effective on August 5, 1993, and is a federal law that requires certain employers to allow eligible employees to take up to 12 (under some circumstances 26) weeks of unpaid, job-protected leave during a 12-month period for various health and family-related reasons. Amendments to the FMLA by the National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181, expanded the FMLA to allow eligible employees to take up to 12 weeks of job-protected leave in a 12-month period (a rolling calendar is used in determining eligibility for leave) for any qualifying exigency arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in 12-month period to care for a covered service member with a serious injury. This policy is also in compliance with the Pregnancy Discrimination Act of 1978.

## Who is Responsible for this Policy

- Office of Human Resources

## Who is Affected by this Policy

- All eligible employees of the college

## Definitions

- **Serious Health Condition:** An illness, injury, impairment or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the essential functions of their job, prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment, or incapacity due to pregnancy, incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.
- **Child:** A newborn, child 18 and under, a child 18 and over unable to care for self; due to disability, foster children, wards of the state, step-children, or a minor to whom an employee stands in loco parentis (such as a domestic partner's children).
- **Parent:** Biological or legal guardian since childhood.
- **Immediate Family Member:** Employee's spouse, child, or parents including anyone designated in loco parentis (not including parents-in-law or employee's domestic partner).
  - Effective February 27, 2015, spouse has been defined as follows: Eligible employees in legal same-sex and common-law marriages will be able to take FMLA leave to care for their spouse or family member, regardless of where they live. This will ensure that the FMLA will give spouses in same-sex and common-law marriages the same rights as all spouses to fully exercise their FMLA entitlement.
- **Covered Military Member:** Employee's spouse, child or parent in the National Guard/Reserves (or certain retired members of the Armed Force and Retired Reserves) who is on active duty or has been notified of an impending call to active duty in the Armed Forces.
- **Covered Service Member:** Current member of the Armed Forces, including a member of the National Guard/Reserves, or member of such group who is on temporary disability retired list and has a serious injury/illness incurred in line of duty. Such member must be undergoing medical treatment, recuperation, therapy and/or outpatient status (temporary disability retired list).
- **Next of Kin:** Nearest blood relative other than the covered service member's spouse, parent, child in the following priority:
  - Blood relatives who have been 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.

## Principles

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. Employees contemplating taking family/medical leave or who have concerns about leave issues are encouraged to contact Human Resources for further information regarding their rights, obligations and the applicable procedural requirements. Human Resources will be solely responsible for granting or denying a request for family/medical leave.

Employees who are working elsewhere, or who are considering working elsewhere, during their leave must notify Human Resources to allow the college to determine whether such employment is inconsistent with their need for leave or otherwise represents a conflict of interest.

The college reserves the right to amend any portion of this policy in compliance with the federal Family Medical Leave Act.

- **Eligible Candidates**

- Employee must have completed 52 weeks of work service within the previous 12-month period. Employees do not have to be employed for a consecutive 12-month period.
- Employee must have worked a minimum of 1250 hours during the 52 weeks immediately prior to the leave request.
- Employee works at a location where at least 50 employees are employed by the employer within 75 miles.

- **Leave Entitlement**

The college will provide family/medical leave for the following reasons:

- For their own serious health condition (including pregnancy, prenatal medical care, childbirth and on-the-job illnesses or injuries, which makes them unable to perform at least one of the essential functions of their job (referred to as “medical leave”).
- For the birth and/or care of a newborn, adopted or foster-placed child and for the adoption or foster placement of a child within 12 months of the birth, adoption or foster placement (referred to as “family leave”).
- To provide necessary care for the serious health condition of their spouse, domestic partner, parent, minor or disabled child (referred to as “family leave”).
- To provide necessary care for a spouse, parent, child or otherwise nearest blood relative who incurred a serious injury or illness in the line of active duty in the Armed Forces that may render the service member medically unfit to perform their duties, and for which the service member is undergoing medical treatment, recuperation or therapy; is in outpatient status; or is on the temporary disability retired list (referred to as “family leave” or “service member family leave”).
- When a spouse, parent or child is on or has been called to active duty status in the National Guard or Reserves in support of a contingency operation and experiences a “qualifying exigency,” such as the need to attend certain military events, arrange for alternative childcare, address certain financial and legal arrangements, attend certain

counseling sessions and attend post-deployment reintegration briefings (referred to as “family leave” or “military exigency family leave”).

- Effective January 16, 2009, “Qualifying exigency” is as follows:
  - Short-notice deployment
  - Military events and related activities
  - Childcare and school activities
  - Financial/Legal arrangements
  - Counseling
  - Rest/recuperation
  - Post-deployment activities
  - Additional activities not encompassed in the other categories, but agreed to by the employer and the employee

## Responsibilities

- **Employee Responsibility**

- Follow steps under planned/unplanned family medical leave of absence.
- Alert supervisor of anticipated leave request.
- Submit time leave reports/electronic timesheets while on leave.
- Notify Human Resources of any changes of medical status.
- Follow proper return to work procedure (Please see return to work procedure listed above.)

- **Human Resources Responsibility**

- Will review completed forms and notify employee if eligible criteria is met within 5 business days.
- FMLA Eligibility rights and responsibilities, as well as any request for additional certification, will be provided.
- Designation of FMLA for qualified/eligible employees will be mailed within 5 business days.
- Will contact employee to discuss usage of available time banks (determination of paid leave or unpaid leave).
- Forecast/analyze applicable Paid Time Off (PTO) based on the dates of incapacity.
- Discuss Short Term Disability benefits with qualified employees.
- Monitor medical/return to work status.

- **Supervisor(s) Responsibility**

- Confer with Human Resources upon knowledge of any potential leave situations (including intermittent or work reduced hours).
- Confer with Human Resources to inquire about temporary/permanent filling of any position while an employee is on leave.
- Refer all inquiries related to an employee’s accruals or completion of timesheet/leave reports to the human resources department.

## Procedures

- **Requesting a Planned Family Medical Leave of Absence**
  - Employees seeking leave should provide as much notice as possible of their need for leave. Employees requesting leave, to the extent that such leave is foreseeable, must provide at least 15 calendar days of prior notice for leave to care for a family member with a serious health condition, and at least 30 calendar days of prior notice for leave due to their own serious health condition or to care for a newborn or newly adopted or foster-placed child. Failure to provide proper notice may result in a delay of leave or discipline for unauthorized absence.
  - Employee will download or contact Human Resources for Employee Leave of Absence form, Certification of Health Practitioner Form and Return to Work Certification Form for review and completion.
  - Communicate the need for the FMLA request to their supervisor as soon as possible. ○ Schedule an appointment with the Human Resources Time & Attendance Coordinator to review completed forms and discuss eligibility rights.
  - After a request for leave, the college will provide notice of employees' eligibility for leave.
  - Depending upon the circumstances, full-time employees may, after exhausting all sick time, be entitled to receive Short-Term Disability benefits.
  
- **Requesting an Unplanned Family 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 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, the need for hospitalization or continuing treatment by a health care 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.
  - Employee will download or contact Human Resources for Employee Leave of Absence form, Certification of Health Practitioner Form and Return to Work Certification Form for review and completion.
  - Communicate the need for the FMLA request to their supervisor as soon as possible.
  - Schedule an appointment with the Human Resources Time & Leave Specialist to review completed forms and discuss eligibility rights.
  - After a request for leave, the college will provide notice of employees' eligibility for leave.
  - If employee is unable to contact Human Resources or communicate the need for the request to their supervisor, employee's designee should notify the organization.
  - Depending upon the circumstances, full-time employees may, after exhausting all sick time, be entitled to receive Short-Term Disability benefits.

- **Extended Medical Leave of Absences**

- Prior to the expiration of their medical leave, employees needing additional time off must request such leave from the college in writing, and with any appropriate supporting documentation, including the reason for continued leave, specific dates requested and other relevant information requested by the college.
- Depending on the circumstances, the college will grant or deny such leave in its sole discretion. Extended leave will not be granted where such leave would result in undue hardship to the college's operations.
- In situations where the college allows employees to remain on leave past their entitlement, such employees are no longer guaranteed reinstatement to their same or an equivalent position, but may be so reinstated, or, in the sole discretion of the college, be reinstated to another available position for which they are qualified.
- Failure to comply with this policy may result in termination of employment for unauthorized absence.

- **Return 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. 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.
- 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 on leave must give at least two business days' notice (business days means Monday through Friday during regular business hours 9:00 a.m. to 5:00 p.m.) of their intended return to work date.
- Upon return to work, employees who took leave due to their own serious health condition must submit a medical certification stating that they are able to perform the essential functions of their position with or without reasonable accommodation.

## Violations

N/A

## Related Policies

N/A

## Related Documents

- [FIT Leave of Absence Forms](#)
- [FIT Supervisor Responsibilities](#)

## Contacts

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