

WESTERN NEBRASKA COMMUNITY COLLEGE

Western Community College Area Board of Governors' Policy

TITLE:	Family and Medical Leave Act
DIVISION:	Human Resources
CATEGORY:	Personnel
REFERENCE:	Family and Medical Act of 1993 (FMLA)
NUMBER:	BP-420
APPROVAL/DATE:	F. Lynne Klemke, President, WCCA Board of Governors June 15, 2022

Purpose

To establish a policy for the administration of the federal Family and Medical Leave Act of 1993 (FMLA) at Western Nebraska Community College.

Scope

This policy applies to all eligible WNCC employees.

Definitions

Serious Health Condition – A serious health condition is defined as a condition that requires inpatient care at a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a healthcare provider as that term is defined in the applicable laws and regulations for the Family Medical Leave Act.

Spouse – Under the FMLA, a “spouse” means a husband or wife. Husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one state. This definition includes an individual in a same-sex or common law marriage that either:

- a) was entered into in a state that recognizes such marriages; or
- b) if entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state.

Policy

In accordance with the Family and Medical Leave Act of 1993 (FMLA), and any amendments thereafter, WNCC provides eligible employees up to 12 weeks of family and medical leave in a 12-month period. This 12-month period is measured forward from the first day of leave, (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness). FMLA leave runs concurrently with all other college-sponsored leave plans, both paid and unpaid, and any collective bargaining agreements.

This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

Employees with questions about eligibility under this FMLA policy or under the company's sick leave policy are encouraged to consult with the Human Resources.

Eligibility

To participate in FMLA, an employee must meet the following two standards:

1. Worked for the College for at least 12 months. The 12 months need not have been consecutive, provided any break in service does not exceed seven years.
2. Worked for the College at least 1250 hours during the 12-month period immediately before the date the leave begins. The 1250 hours does not include any paid or unpaid leave time used.

Reasons for Leave

Family and Medical Leave may be pursued under the following circumstances:

1. The birth of a child and to care for that child.
2. The placement of a child for adoption or foster care and to care for the newly placed child.
3. To care for a spouse, child, or parent with a serious health condition as described above.
4. The serious health condition, as described above, of the employee.
5. Qualifying exigency leave for families of members of the National Guard or Reserve or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter, or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service.

6. To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered service member.
7. Military care giver leave (also known as covered service member leave) to care for an injured or ill service member or veteran.

Employee Status and Benefits during Leave

While an employee is on Family and Medical Leave, the employee shall be entitled to continued benefit coverage on the same terms as if the employee were not on leave. Benefit premiums paid by the employee must be paid to and received by the College on or prior to the last business day of each month in order to keep such coverage in effect.

If an employee fails to return to work after Family and Medical Leave, the employee shall be liable to the College for the premiums paid by the College during the employee's leave unless the failure to return is due to the serious health condition of the employee or his or her family member, or is, for any reason, beyond the control of the employee.

While on Family and Medical Leave, the employee shall not accrue any type of paid leave benefits. Employees shall not be entitled to any right, benefit, or position of employment other than that to which the employee would have been entitled had him or her not taken Family and Medical Leave.

Intermittent Leave or a Reduced Work Schedule

Employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year), or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member over a 12-month period).

For the birth, adoption, or foster care of a child, WNCC and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced-hour schedule. Leave for birth, adoption, or foster care of a child must be taken within one year of the birth or placement of the child.

WNCC may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.

Procedure for Requesting FMLA Leave

1. Notice

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the Human Resource Department. When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day the need for leave is discovered or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the WNCC's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

2. Medical Certification/Recertification of a Serious Health Condition:

WNCC will require certification for a serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Medical certification will be provided using the Department of Labor Certification of Health Care Provider form that applies.

WNCC has the right to ask for a second opinion if it has reason to doubt the certification. The College will pay for the certification from a second doctor selected by the College. If necessary to

resolve a conflict between the original certification and the second opinion, the College will require the opinion of a third doctor. The College and employee will jointly select the third doctor, and the college will pay for the opinion. This third opinion will be considered final.

WNCC may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days unless circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the college may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence.

3. Return to Work Certification:

To be cleared to return to work following FMLA leave for a certified personal health condition, employee must provide Human Resources with an approval to return to work form completed by employee's healthcare provider.

FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement which provides greater family and medical leave rights.

Applicability

The College President shall promulgate procedures necessary to implement this policy.

Revising this Policy

This Board Policy supersedes any prior WNCC policy, procedure, guideline, or handbook on this subject matter.

If statutory provisions, regulatory guidance, or court interpretations change or conflict with this Board Policy, the Board retains the right to revise accordingly and for the changes to take effect immediately.

Adoption Date and Board of Governors' Minutes Item Number: 2009

Revision Date and Board of Governors' Minutes Item Number: June 15, 2022, Item I(4)

Prior Policy Number:

415.2500.09 (Family and Medical Leave)

Schedule for Review:

Divisions/Department Responsible for Review and Update: Human Resources

Sponsoring Division/Department: Human Resources

Repeal Date and Board of Governors' Minutes Item Number:

Cross Reference:

Procedure(s) for Policy: n/a

Related Policies/References: U.S. Department of Labor Family and Medical Act of 1993