

GRAYS HARBOR COLLEGE
Administrative Procedure

Subject: Family and Medical Leave, **Exempt Staff and Faculty** Page 1 of 12

Administrative Procedure Number: 622.05. **Effective: 6/15/2010**

I. General Provisions

Grays Harbor College will grant up to 12 weeks of FMLA leave during any 12-month period to eligible employees, in accordance with the Family and Medical Leave Act of 1993 and its amendments, for one or more of the following reasons: **(1) – (5)**

Basic Leave Entitlement

1) The birth and care of a newborn child;

2) The placement for adoption or foster care of a child with the eligible employee and to care for that child;

- Entitlement to FMLA leave for the care of a newborn child or newly adopted or foster child ends twelve months from the date of the birth or the placement of the foster or adopted child.

3) To care for an employee's spouse, parent or child (child must be under the age of 18 or over 18 and incapable of self care due to a disability) with a serious health condition;

4) Due to the employee's own serious health condition; or

Military Exigency Leave Entitlement

5) Due to a qualifying exigency arising from the fact that spouse, child of any age, or parent of an eligible employee is on covered active duty or has been notified of a pending call to covered active duty in the Armed Forces. See definition of "covered active duty" below.

- Exigency leave may be taken for one or more of the following reasons and as defined in the FMLA regulations:

1) Short-notice deployment – notified 7 days or less before deployment

--Leave for this purpose can be used for up to 7 days beginning on the date of the notice of deployment.

2) Military events and related activities.

-- To attend official ceremonies or events related to active duty; to attend family support assistance programs, briefings, etc.

3) Childcare and school activities

4) Financial and legal arrangements

5) Counseling

6) Rest and Recuperation.

-- To spend time with covered military member

-- Eligible Employees can take up to 5 days for each instance of R&R

7) Post-deployment activities

8) Additional activities

--Anything that the Employer and Employee agree upon relating to the exigency

Military Caregiver Leave Entitlement

GRAYS HARBOR COLLEGE will grant leave as follows: to an eligible employee who is spouse, child, parent of a child of any age, or next of kin of a covered service member (CSM) who is undergoing treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness (see definition below) :

6) Up to 26 weeks of service member caregiver leave in a single 12-month period to care for the CSM

- During the single 12-month period, an eligible employee is limited to a combined total of 26 weeks of leave for service member caregiver leave and FMLA leave for other qualifying reasons.
- Caregiver leave applies to care for members of the Armed Forces, National Guard or Reserves or Veterans who were members of the Armed Forces, National Guard or Reserves at any time during the five years preceding the treatment, recuperation or therapy.

II. Definitions

Family Member includes children, spouse, and parents, but not son-in-law, daughter-in-law or parents-in-law.

Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

Parent means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a son or daughter.

Son or daughter for purposes of FMLA used for care of a family member with a serious health condition that is not military caregiver leave, means a biological, adopted, or foster child, a

stepchild, a legal ward, or a child of a person standing *in loco parentis*. The child must be either under age 18 or age 18 or older and “incapable of self-care because of a mental or physical disability.

Son or daughter for purposes of FMLA used for military family leave for an exigency or for military caregiver leave for a covered service member, means a biological, adopted, or foster child of any age, a stepchild of any age, a legal ward of any age, or a child of any age of a person standing *in loco parentis*.

In loco parentis – Persons who are *In loco parentis* include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child.

Covered Active Duty - (A) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and (B) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of Title 10 USC.

Covered Service Member – (A) a member of the Armed Forces, including 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

(B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including the National Guard or Reserves, at any time during the 5 year period preceding the date on which the veteran undergoes the medical treatment, recuperation of therapy.

Next of kin – Used with respect to an individual means the nearest blood relative of that individual other than spouse, parent or child, in the following order of priority:

- Blood relatives who have been granted legal custody of the service member;
- brothers and sisters;
- grandparents;
- aunts and uncles;
- cousins.

- If the covered service member designates another blood relative as their nearest blood relative that designation takes precedent over the above list. That person would be the only next of kin.

Serious Injury or Illness – (A) in the case of a member of the Armed Forces, including the National Guard or Reserves, an injury or illness 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) that may render the member medically unfit to perform the duties of the member’s office, grade, rank or rating, and

(B) in the case of a veteran who was a member of the Armed Forces, including National Guard or Reserves, at any time during the 5 year period preceding the medical treatment, recuperation or therapy, a qualifying injury or illness that was incurred by the member in 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 line of duty on active duty in Armed Forces) and manifested itself before or after the member became a veteran.

“Serious health condition” (SHC) means an illness, injury, impairment, or physical or mental condition that involves either:

- 1) Inpatient care including period of incapacity or subsequent treatment; or
- 2) Continuing treatment by a health care provider (**HCP**). This includes any one or more of the following:
 - a) period of incapacity of more than 3 consecutive full calendar days and any subsequent treatment or incapacity that relates to the same condition that also involves:
 - 1) Treatment 2 or more times within 30 days of the first day of incapacity (absent extenuating circumstances) by HCP etc, or
 - 2) Treatment by HCP at least once and continuing treatment under the supervision of HCP.

This requirement means an in person visit to a HCP.
The first (or only) visit must occur within 7 days of the first day of incapacity.
 - b) Incapacity due to pregnancy or prenatal care.
 - c) Incapacity due to chronic SHC. Chronic SHC is one which:
 1. Requires periodic visits (at least twice per year) to HCP etc;
 2. Continues over extended period; and
 3. May cause episodic rather than continuing incapacity (asthma, diabetes, epilepsy, etc).
 - d) Incapacity which is permanent or long term where treatment may not be effective. (Alzheimer's, severe stroke, terminal stages of a disease, etc.)
 - e) Absence to receive multiple treatments for restorative surgery after accident, or for a condition that would result in incapacity for 3 consecutive full calendar days or more absent medical intervention (cancer, kidney disease, etc.)

Health care provider means:

- Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; **or**
- Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a partial dislocation of a joint as

demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; **or**

- Nurse practitioners, nurse-midwives, clinical social workers and physician assistants authorized to practice, and performing within the scope of their practice, as defined under state law; **or**
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; **or**
- Any health care provider recognized by the employer or the employer's group health plan benefits manager.

III. Eligibility

An eligible employee must meet all of the following conditions:

- 1) The employee must have worked for GRAYS HARBOR COLLEGE or another Washington state Grays Harbor College or institution of higher education for at least 12 months (need not be consecutive) prior to the commencement of the leave; (periods of service prior to a break in service of 7 years or longer will generally not be counted toward the 12 months);
- 2) The employee must have been employed for at least 1,250 hours of service in the previous twelve month period immediately preceding the commencement of the leave; and
- 3) The employee must have worked at a work site which employs at least 50 employees within a 75 mile radius.

The 1,250 hour requirement under paragraph 2) does not count paid time off such as time used as annual leave, sick leave, exchange time, personal holiday, compensatory time off, or shared leave.

IV. Leave Coverage and 12-Month Period

Measuring the 12-Month Period

An eligible employee can take up to 12 weeks of leave during a 12-month period. GRAYS HARBOR COLLEGE will measure the 12-month period forward from the date the requesting employee's first FMLA leave begins. The employee's next FMLA leave year would begin the first time FMLA leave is taken after completion of the previous 12-month period. For example, if an eligible employee's first request for FMLA leave is on October 1, 2002, for leave to begin on November 1, 2002, the 12-month period begins on November 1, 2002. That employee would be entitled to use 12 weeks of FMLA leave between November 1, 2002, and October 31, 2003. If that employee uses 12 weeks between November 1, 2002, and February 1, 2003, they would not be eligible again until November 1, 2003. If they next use FMLA beginning April 1, 2004, their next 12-month period would run from April 1, 2004, through March 31, 2005.

Should GRAYS HARBOR COLLEGE elect to change the 12-month period, they will provide employees a minimum of 60 days notice prior to the change.

The 12 month period for Caregiver leave for a covered service member will always begin on the first day leave is taken.

Both Spouses Employed by GRAYS HARBOR COLLEGE

If a husband and wife both work for GRAYS HARBOR COLLEGE, they may only take a combined total of 12 weeks of FMLA leave in the 12-month period for the purpose of taking leave for the birth and care of a child, adoption and care of a child, placement and care of a child in foster care, or to care for the employee's parent with a serious health condition. If either spouse uses a portion of the 12-week entitlement for the above reasons, they would still have their remaining entitlement for other FMLA purposes. For example, if a husband and wife each use six weeks of FMLA to care for a newborn child, they would each have an additional six weeks available for their own serious health condition or to care for a sick child or spouse with a serious health condition.

If a husband and wife both work for GRAYS HARBOR COLLEGE they may be limited to a combined total of 26 weeks of leave during the single 12 month period described for service member caregiver leave if the leave is taken for the birth and care of a child, adoption and care of a child, placement and care of a child in foster care, to care for the employee's parent with a serious health condition, or to care for a covered service member with a serious injury of illness.

Accounting for Leave

Use of leave will normally be accounted for on an hourly basis. A full-time employee would thus be entitled to 480 hours of FMLA leave during the 12-month period.

For employees who normally work less than a full-time schedule, the amount of leave will be determined on a pro rata basis and will be determined based on the employee's status at the time of the request for leave. For example, an employee working on a .75 FTE basis will be entitled to 12 weeks or 360 hours of FMLA leave in each 12-month period.

Additional Leave for Disability Related to Pregnancy and Child Care

Pursuant to Washington state law, RCW 49.78.390, leave provided for the birth and care of a child or for placement for adoption or foster care shall be in addition to any leave used by the mother for sickness or temporary disability because of pregnancy or childbirth.

(1) Leave under this chapter and leave under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth. (2) Leave taken under this chapter must be taken concurrently with any leave taken under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6). [2006 c 59 § 20] RCW 49.78.390

Therefore if the mother has a disability relating to her pregnancy or childbirth and takes time off due to that disability, she is still entitled to the full 12 weeks to be used for other FMLA qualifying purposes assuming she is eligible and has not already used those 12 weeks.

V. Employee Request for Leave and Employer Designation

FMLA designation is the responsibility of GRAYS HARBOR COLLEGE. The GRAYS HARBOR COLLEGE will normally determine eligibility and notify the employee of the employees' rights and responsibilities within five business days, absent extenuating circumstances, of the date the GRAYS HARBOR COLLEGE receives knowledge that the leave is being requested for a FMLA qualifying reason. The GRAYS HARBOR COLLEGE may request appropriate certification to support the request for leave, including for military exigency leave. After receipt of complete and sufficient information to allow the GRAYS HARBOR COLLEGE to determine that the leave is FMLA qualifying, the GRAYS HARBOR COLLEGE will notify the employee within 5 business days (absent extenuating circumstances) that the leave is being designated as FMLA leave.

FMLA can also be designated retroactively unless the employee suffers injury or harm as a result of the retroactive designation, or if the employee and the employer agree.

It is the employee's responsibility to notify their supervisor of the need for leave and to provide reasons for the leave to allow the employer to determine if the leave qualifies for FMLA leave. The employee should also provide the anticipated timing and duration of the leave. The employee should notify their supervisor at least 30 days in advance of the need for leave if the need for leave is foreseeable. If the need for leave is not foreseeable, notice must be given as soon as possible.

The employer may inquire further regarding the need for leave if the employee does not initially provide enough information to determine if the leave request qualifies for FMLA designation.

The employer will provide the employee with a FMLA request form to be completed by the employee and a medical certification form to be completed by the employee's or family member's health care provider, or the covered service member's health care provider.

The employee requesting military family leave will be provided with certification forms to be completed and a request for a copy of the Active Duty Orders of the military member.

The employee should return any certification forms within 15 calendar days (absent extenuating circumstances) after the employee receives them.

VI. Intermittent Leave

Intermittent leave or leave on a reduced schedule will be granted if medically necessary for an eligible employee's own serious health condition, to care for a family member with a serious health condition or to care for a covered service member with a serious injury or illness.

Medical documentation of the need for the leave on an intermittent basis or for leave on a reduced schedule will be required.

Intermittent leave may also be taken for military exigency leave.

Employees needing intermittent leave or leave on a reduced schedule for foreseeable medical treatment, must work with their department and make reasonable efforts to schedule the leave, subject to the approval of the health care provider, so as not to unduly disrupt the department's or "GRAYS HARBOR COLLEGE's" operations.

GRAYS HARBOR COLLEGE may choose to grant leave on an intermittent basis for bonding with a newborn child or a foster or adopted child. Granting of intermittent leave for this purpose is discretionary and will be determined on a case by case basis. If such leave is granted, the employee and GRAYS HARBOR COLLEGE must mutually agree to the schedule to be worked before the employee may take the intermittent leave.

GRAYS HARBOR COLLEGE may temporarily transfer an employee using intermittent leave for planned medical treatment, including during a period of recovery from one's own serious health condition, to an alternate position for which the employee is qualified, with equivalent pay and benefits if the alternate position would better accommodate the intermittent schedule.

VII. Substitution of Paid Leave/Concurrent Leave

GRAYS HARBOR COLLEGE will not require an employee to substitute paid leave for otherwise unpaid FMLA leave. GRAYS HARBOR COLLEGE employees may use any combination of paid or unpaid leave to which they are entitled to toward the FMLA entitlement. The types of leave that can be substituted for otherwise unpaid FMLA leave include annual leave, sick leave, shared leave, compensatory time off, exchange time and/or personal holidays. Substitution of sick leave is allowed only for those purposes that sick leave use is normally allowed for pursuant to state laws or GRAYS HARBOR COLLEGE policy, as applicable.

The use of any leave, paid or unpaid, for a FMLA qualifying event will run concurrently with, and not in addition to, the use of FMLA for that event. Absences covered by worker's compensation will also run concurrently with FMLA, assuming they are qualifying conditions.

VIII. Certification

Medical certification may be required for any request for use of leave for an employee's own serious health condition, to care for a family member with a serious health condition, or to care for a covered service member with a serious injury or illness. Certification may be required for any request for military exigency leave. The employee will be asked to respond to the request for a complete certification within 15 calendar days of the request or to provide a reasonable explanation of the delay. Failure to provide the requested certification may result in the denial or discontinuation of leave, or the loss of FMLA protection for the leave. Certification should be

provided by using the appropriate certification form attached. All applicable information should be included.

If GRAYS HARBOR COLLEGE has questions regarding the initial medical certification they may, with a release from the employee, contact the employee's health care professional to clarify the original certificate. The GRAYS HARBOR COLLEGE may also contact the employee's healthcare professional to authenticate the certificate.

If GRAYS HARBOR COLLEGE has reason to question the medical certification, they may elect to seek a second opinion from a health care provider of their choosing at GRAYS HARBOR COLLEGE expense. If the second opinion conflicts with the first opinion, a third opinion may be obtained at GRAYS HARBOR COLLEGE expense from a health care provider mutually chosen by the employee and GRAYS HARBOR COLLEGE. The third opinion will be controlling. The employee will be considered provisionally entitled to leave pending the second and/or third opinion.

GRAYS HARBOR COLLEGE may ask for re-certification under the provisions of the FMLA. Re-certifications are provided at the employee's expense.

"GRAYS HARBOR COLLEGE may ask for fitness for duty certifications under the provisions of the FMLA. Fitness for duty certifications are at the employee's expense.

IX. Continuation of Benefits

During approved FMLA leave, GRAYS HARBOR COLLEGE will continue an eligible employee's health and other benefits at the same level and under the same conditions as if the employee had continued to work. The eligible employee will be required to pay for their portion of their health care and other benefit premiums during their FMLA absence.

During paid leave, GRAYS HARBOR COLLEGE will continue to make payroll deductions for the employee's share of the health care and other premiums. During unpaid leave the employee must continue to make these payments. Payment should be made to the Payroll and Benefits department. If the employee on unpaid leave does not pay their share of the premiums, GRAYS HARBOR COLLEGE may elect to make these payments on behalf of the employee, thus continuing their benefits, and collect the amounts due from the employee upon their return to work. The employee using unpaid FMLA leave will be required to indicate on the FMLA request form how they intend to pay their share of premiums during their absence.

If an eligible employee chooses not to return to work at the conclusion of their unpaid FMLA leave for reasons other than a continued serious health condition of the employee or the employee's family member, the continued serious injury or illness of a covered service member, or a circumstance beyond the employee's control, GRAYS HARBOR COLLEGE may require the employee to reimburse GRAYS HARBOR COLLEGE the amount of health care benefit premiums paid by GRAYS HARBOR COLLEGE for the employee during the unpaid FMLA leave period.

X. Returning to Work

Upon returning to work after the employee's own FMLA qualifying illness, the employee will be required to provide a fitness for duty certificate from a health care provider. The fitness for duty certificate should be job related and consistent with business necessity. A fitness for duty certificate will not be required for intermittent leave usage unless there are safety concerns regarding the employee's ability to perform their duties based on the serious health condition.

Following absence granted for an approved FMLA event, an employee shall be returned to the same or an equivalent position as the one held immediately prior to the absence.

An employee returning from FMLA leave has no greater entitlement to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave period.

XI. Miscellaneous

Employees should seek assistance from Human Resource Services to determine if they are eligible for other types of leave in addition to the leave covered by this policy; e.g. disability leave, parental leave, family care leave, Washington Family lave for domestic partners, shared leave, etc.

XII. Interaction with Laws and Regulations

This policy will be construed in accordance with the FMLA and its accompanying regulations as currently written or as hereafter amended. To the extent items or aspects of the FMLA or its accompanying regulations are not covered in this policy or are, or become, inconsistent with this policy, those gaps or inconsistencies will be construed in accordance with the FMLA and its regulations.

XIII. Procedure for Requesting Leave

PROCEDURE:

Responsibility:

Employee: Notify supervisor at least 30 calendar days in advance or as soon as possible of the need for FMLA leave.

Provide medical certification from a licensed health care provider within 15 calendar days of the request for FMLA leave if the leave is due to the employee's own serious health condition or serious

health condition of a parent, spouse, or child. (A FMLA medical certification form is available in the Human Resources Office).

Supervisor: Upon becoming aware of the qualifying event, notify the Human Resources Office. The employee will submit a request for FMLA leave to the Human Resources Office as soon as possible for review and processing.

Human Resources: Upon notification of the need for FMLA leave, HR will determine whether an employee meets the eligibility. Eligibility will be established through the medical certification process. The employee will be notified of eligibility determination. Confirmation in writing will be provided to the employee if FMLA leave is approved.

Employee: If approved for FMLA leave, submit FMLA leave request and designate the type of leave to be taken (sick, annual, personal holiday or leave without pay).

Contact Human Resources to make arrangements concerning health package benefits. Provide medical release to supervisor or Human Resources Office upon return to work, if required.

References

29 U.S.C. § 2601 et seq.

29 CFR 825, RCW 49.78

Please note: Article 16 of the WPEA contract covers FMLA for represented classified staff. WAC 357-31 covers FMLA for non-represented classified staff.

Approved by: _____
Dr. Edward Brewster, President

Date