

**TITLE: FAMILY AND MEDICAL LEAVE**

**POLICY NO: 3-29**

**EFFECTIVE DATE: 07/17/2000**

**VCCS POLICY NO: [3.9.5](#)**

**REVISED DATE: 05/21/2020**

I. Purpose:

To establish consistent application and processing of family and medical leave for eligible college employees, due to an employee's own serious health condition or the serious health condition of an eligible family member; or to care for a covered military servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember; or because of a "qualifying exigency" when the employee's spouse, son, daughter, or parent who is a member of a regular component of the Armed Forces, or a member of the National Guard or Reserves, is on active duty or called to active duty status in support of a contingency operation.

II. Definitions:

Covered military servicemember: a 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 temporary disability retired list for a serious injury or illness; or 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 a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

Eligible employees: any full-time administrative, professional, or teaching faculty; adjunct faculty; full-time or part-time classified employee; restricted employee; wage/hourly employee; or the college president who has been employed by the state for a total of at least twelve (12) months in the past seven years and who has worked at least 1,250 hours in the previous twelve (12) months before the start of the leave.

Family and medical leave: unpaid leave for up to twelve (12) workweeks in a leave year because of an employee's own serious health condition or the serious health condition of an eligible family member, or because of any qualifying exigency arising out of the fact that an eligible family member is on covered active duty or has an impending call to active duty in the Armed Forces. Up to twenty-six (26) workweeks of unpaid leave are provided to care for a covered servicemember during a single 12-month period for the reasons specified in this policy in conformance with the federal Family and Medical Leave Act (FMLA) of 1993 and the National Defense Authorization Act of January 28, 2008.

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Intermittent leave schedule: a leave schedule permitting the employee to take leave periodically for a few hours a day (on an hour-for-hour basis and less than eight [8] hours), or for a few days, on an as-needed basis. Employees may be required to produce medical certification when intermittent leave is necessary.

Parent: a biological parent or an individual who stood in place of the parent of the employee and was charged with the duties and responsibilities of the parent.

Parental leave: paid leave (up to eight [8] weeks or 320 hours) for eligible full-time and part-time classified state employees and full-time faculty members to care for and bond with a newborn or child under the age of eighteen (18) newly-placed for adoption or for foster or custodial care. Paid parental leave is designated as Family and Medical Leave (FML) and runs concurrently with the FML period.

Qualifying exigency: a reason for taking FMLA leave arising out of the fact that the employee's spouse, son, daughter, or parent is on, or has been notified of, an impending call or order to active duty in the Armed Forces. Qualifying exigencies fall into eight (8) categories: 1) short-notice deployment, 2) military events and activities, 3) childcare and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities, and 8) additional activities, which arise out of active duty or call to active duty, provided that the employee and agency agree.

Reduced schedule: a leave schedule permitting the employee to reduce his or her usual number of hours worked per workweek or per workday. Employees may be required to produce medical certification when a reduced schedule is necessary.

Serious health condition/illness: an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a health care provider.

Son or daughter: a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in place of the parent. The child must either be under age eighteen (18) or be eighteen (18) or older and incapable of self-care because of a mental or physical disability.

Spouse: a husband or wife as recognized in accordance with Executive Order No. 30, Marriage Equality in the Commonwealth of Virginia.

Traditional Sick Leave: paid leave from work for eligible employees for reasons related to their own health or that of certain family members, and for family related absences covered by the Family and Medical Leave Act (FMLA).

Virginia Sickness and Disability Program (VSDP): paid leave from work for eligible employees, which provides sick leave, family/personal leave, short-term disability benefits, and long-term disability and long-term care benefits to eligible full-time and part-time classified state employees, and full-time faculty members who have elected the VRS retirement plan and VSDP coverage.

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III. Policy:

J. Sargeant Reynolds Community College (Reynolds) shall ensure compliance with the Family and Medical Leave Act (FMLA) of 1993 and the National Defense Authorization Act of January 28, 2008. The college shall implement administrative procedures consistent with all applicable personnel regulations and policies governing family and medical leave.

A. When family and medical leave is allowed

1. Eligible full-time employees may take up to twelve (12) workweeks (60 workdays; 480 work hours) of unpaid family and medical leave in a leave year (January 10 – January 9 of the subsequent year) for the following reasons:
  - a. the prenatal care for or birth of a child, and to care for a newborn child (to be taken within twelve [12] months of the child's birth);
  - b. the placement of a child with the employee for adoption or foster care (to be taken within twelve [12] months of date of placement);
  - c. to care for the spouse, son, daughter, or parent with a serious health condition;
  - d. because of a serious health condition that renders the employee unable to perform the functions of his or her position. The college may request certification that the employee is unable to work at all or is unable to perform any of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act. Also, an employee that goes on leave without pay—workers' compensation—may have that time counted towards his or her twelve (12) weeks of family and medical leave.
  - e. because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military servicemember on covered active duty, or has been notified of an impending call or order to covered active duty in the Armed Forces.
2. Eligible full-time employees may take up to twenty-six (26) workweeks (130 days; 1,040 work hours) of unpaid family and medical leave in a single 12-month period to care for a covered military servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember. The single 12-month period commences the first day leave is taken to care for the covered sevicemember and expires 12 months later. The combined total time missed from work may not exceed 26 weeks of unpaid leave during a single 12-month period for any FMLA-qualifying reason.
3. Eligible part-time employees (faculty or classified) may take up to twelve (12) weeks of unpaid family and medical leave in a leave year (January 10 – January 9 of the

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subsequent year) for the reasons listed in Section III.A.1. Actual hours taken shall be counted on a pro-rated basis corresponding to the percentage of hours they normally are scheduled to work during a calendar year.

4. Eligible wage employees may take up to twelve (12) weeks of unpaid family and medical leave in a leave year (January 10 – January 9 of the subsequent year) for the reasons listed in Section III.A.1. Actual hours taken shall be counted on a pro-rated basis corresponding to the percentage of hours they normally are scheduled to work during the 365-day period prior to the date family and medical leave is scheduled to begin.

**B. Restricted use of family and medical leave**

1. Family and medical leave may not be used for short-term conditions for which treatment and recovery are brief, such as minor illnesses and out-patient surgical procedures with expected brief recuperating periods. It does not provide for the intermittent care of a child for such commonplace illnesses as colds and flu.
2. When both parents of a child work for the college, the full amount of leave may be limited to a combined total of twelve (12) workweeks in a leave year when the leave is for the birth, adoption, or foster care placement of a child. Leave for birth and care, or placement for adoption or foster care, must conclude within 12 months of the birth or placement.
3. When an employee and his/her spouse work for the college, the full amount of leave may be limited to a combined total of twelve (12) workweeks in a leave year when the leave is for the care of the employee's parent(s) with a serious health condition.
4. When both parents of a covered military servicemember work for the college, the full amount of leave may be limited to a combined total of twenty-six (26) workweeks in a twelve-month (12-month) period.

**C. Paid leave**

1. Employees have the option of using paid leave, as appropriate under each particular leave policy, for absences covered under family and medical leave. Paid leave can be designated as family and medical leave in two (2) ways:
  - a. the employee requests to use paid leave (annual, family/personal, compensatory, overtime, paid parental, or sick) during a family and medical leave period.
  - b. the college designates paid leave taken as family and medical leave, when it qualifies. The college shall notify the employee of this designation within

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five (5) working days of the college's decision to designate paid leave as family and medical leave.

- (1) Personal illness – Employees may use all available annual, compensatory, overtime, family/personal, and sick leave during the FMLA-designated leave period.
- (2) Family reasons – Employees may use all available annual, family/personal, compensatory, and overtime leave hours, and 33% of available sick leave hours during the FMLA-designated leave period taken for family reasons.
- (3) Paid parental leave – Employees may use up to eight (8) weeks (320 hours) of paid parental leave within six (6) months of the birth of an infant or adoptive, foster, or custodial placement of a child under the age of eighteen (18). This paid leave may be used in combination with other benefits; e.g., VSDP and Traditional Sick Leave.

2. When employees exhaust paid leave during an FMLA-designated leave period, they shall be provided unpaid leave for the number of workdays, which, when combined with the number of days of paid leave, equal a total of 60 workdays or 480 work hours (12 weeks).

**D. Intermittent leave or leave on reduced schedule**

1. The college shall permit employees to take intermittent leave or work a reduced schedule, not to exceed 480 hours (non-military benefit) or 1040 hours (military benefit) for full-time employees, as follows:
  - a. At the employee's request, the college shall approve intermittent leave or a reduced work schedule when it is medically necessary, because of an eligible employee's own serious health condition or the serious health condition of children, spouse, or parent(s).
  - b. Employees who must take intermittent leave or work a reduced schedule may either use their available paid leave balances, as permitted by each specific leave policy, or take unpaid family and medical leave.
  - c. Employees do not accrue annual and sick leave when they are on leave without pay status or on leave for ninety (90) consecutive calendar days during family and medical leave.
  - d. If requested by the employee in advance and approved by the college in advance, an employee may take leave intermittently or on a reduced schedule to care for a newborn child or a child that has been placed with the employee for adoption or foster care.

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2. If requested by the employee in advance and approved by the college in advance, an eligible employee may take paid parental leave up to eight (8) weeks (320 hours) intermittently or on a reduced schedule within six (6) months of the birth of an infant or placement of a child.
3. When the conditions noted in Section D.1. above are applicable, the college can temporarily transfer the employee to another position that better accommodates the intermittent leave or reduced schedule, as long as the new position carries equivalent pay and benefits.

**E. Family and medical leave notification and scheduling**

**1. Employee responsibility**

An employee should submit a written request for family and medical leave at least thirty (30) days before the anticipated beginning of the family and medical leave, unless emergencies or unforeseen events preclude such advance notice.

**2. College actions**

- a. The college must grant an eligible employee's request to take up to twelve (12) workweeks of family and medical leave during a leave year, or 26 weeks of leave to care for a covered servicemember during a 12-month period, for the reasons stated in Section III.A. above.
- b. The college may require medical certification for leave that is requested for an employee's serious health condition, for his or her family member's serious health condition, or for the serious injury or illness of a covered service member, before granting family and medical leave.

**F. Certification of need for leave**

1. The college may require that a request for family and medical leave be supported by a health care provider's certification of the medical condition of the person affected, to include the date when the serious condition began, the probable duration of the condition, and other appropriate facts as detailed in Department of Human Resource Management (DHRM) Policy 4.20.
2. The college may require an employee or designee to report periodically during the leave period on his or her leave status and intention to return to work and to provide subsequent re-certifications on a reasonable basis.

**G. Restoration to position**

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1. At the end of family and medical leave, the college shall ensure that employees are normally reinstated as follows:
  - a. Original position – The employee shall normally be reinstated to the position held prior to the leave begin date.
  - b. Equivalent position – If the previous position has been filled, the employee shall be entitled to restoration to an equivalent position.

**H. Status of benefits during family and medical leave**

1. The college shall continue to contribute to the health insurance premiums of salaried employees who are on leave under FMLA. Employees using paid leave shall continue to pay their portion of the health insurance premiums. The college shall continue to contribute to the health insurance premiums of salaried employees who are on leave without pay under the provisions of FMLA. The college shall administer the employee's health insurance premiums in accordance to DHRM Policy 4.20.
2. Employee eligibility for incentive increases shall be determined in accordance with DHRM Policy 3.05, Compensation and college procedures, which address leave with and without pay.
3. The college shall continue to pay basic life insurance premiums while employees are on family and medical leave.
4. Leave accrual – Employees shall not accrue annual or sick leave hours during any period of leave without pay, or after ninety (90) consecutive calendar days on leave with pay.
5. Retirement contributions shall be made for any pay period in which qualifying compensation has been received by the employee. Retirement contributions shall not be made for any pay period in which no qualifying compensation has been received by the employee (i.e., the employee was on leave without pay for the entire pay period).
6. Employees' periods of unpaid family and medical leave exceeding fourteen (14) consecutive calendar days shall affect credit service time toward sick leave payout and annual leave anniversary dates. The college's Office of Human Resources shall inform employees affected by these benefit issues.

**I. Management of family and medical leave records**

The college's Office of Human Resources shall ensure all applicable records and related documentation of family and medical leave are maintained and preserved in compliance with DHRM Policy 4.20, Family and Medical Leave.

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IV. Procedures:

A. Employee request for family and medical leave

1. To request up to twelve (12) weeks of family medical leave in a leave year, the eligible employee is required to complete Part I and Part II of [JSRCC Form No. 35-0001](#), Family and Medical Leave Request.
2. Additionally, the employee must obtain the appropriate health care provider's certification for the affected person regarding the family and medical leave request. The U.S. Department of Labor's Certification of Health Care Provider for Employee's Serious Health Condition ([Form WH-380E](#)) or Certification of Health Care Provider for Family Member's Serious Health Condition ([Form WH-380F](#)) may be used for this purpose.
3. To request up to twenty-six (26) weeks of family medical leave in a single 12-month period to care for a covered servicemember, the eligible employee is required to complete Part I and Part II, of [JSRCC Form No. 35-0005](#), Family and Medical Leave Request to Care for Covered Military Servicemember.
4. Additionally, the employee must obtain and complete the U.S. Department of Labor's Certification for Serious Injury or Illness of a Current Servicemember – For Military Family Leave ([Form WH-385](#)), or the Certification of Qualifying Exigency for Military Family Leave ([Form WH-384](#)).
5. The employee or designee is required to submit completed items 1 and 2, or 3 and 4, above, to his or her supervisor at least thirty (30) days prior to the requested leave start date. In the event of an emergency or unforeseen circumstances, the employee must contact the manager of human resources, or the benefits specialist, and submit the completed documents to his/her supervisor immediately.

B. Supervisor's responsibility

1. The supervisor will immediately review the Family and Medical Leave Request form for accuracy and completeness and ensure that the appropriate documentation is attached.
2. The supervisor will complete Part III of the Family and Medical Leave Request form (Form 35-0001 or Form 35-0005). The supervisor will review the family and medical leave request and the requested intermittent leave or reduced schedule leave in order to make plans to accommodate the requested schedule. The supervisor will sign the form and immediately forward the completed original form to the Office of Human Resources. The supervisor will retain a copy of the form for his or her records.

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C. Human Resources' responsibility

1. The Office of Human Resources will review the submitted request and will ensure that the employee requesting family and medical leave is eligible for such leave in accordance with Section III.A. of this policy.
2. The Office of Human Resources will determine if the eligible employee is a Virginia Sickness and Disability Program (VSDP) participant or if the eligible employee is a participant in the Traditional Sick Leave program. This determination is needed to advise the employee regarding his/her available benefits options to receive pay during the FMLA absence. Additionally, if the eligible employee is enrolled in VSDP, and the absence involves the serious health condition of the employee, the Office of Human Resources will provide the employee with the third-party plan administrator (Reed Group) contact information. The third-party plan administrator will manage and monitor the time used under the FMLA to ensure compliance with federal law and state policy and procedure.
3. The Office of Human Resources will determine if the employee is eligible for paid parental leave in accordance with [DHRM Policy 4.21](#), Parental Leave. This determination is needed to advise the employee regarding available benefits options to receive pay during the FMLA absence.
4. Within five (5) workdays of receiving the original FMLA request form from the supervisor, the Office of Human Resources must notify the employee of his or her eligibility for FMLA via the U. S. Department of Labor's Notice of Eligibility and Rights and Responsibilities (Form WH-381).
5. If not accompanied with the employee's original FMLA request, the Office of Human Resources may require medical certification for leave requested for an employee's serious health condition, or for his or her family member's serious health condition, or for the serious injury or illness of a covered military servicemember, before granting family and medical leave. The employee is responsible for obtaining and providing the medical certification to the Office of Human Resources within fifteen (15) calendar days of the request or upon return-to-work from an absence that may qualify as FMLA.
6. The Office of Human Resources must make a determination on the employee's family medical leave request within five (5) business days of receiving sufficient information to make a determination. Once the determination has been made, the Office of Human Resources must provide notification to the employee using the U.S. Department of Labor's Designation Notice ([Form WH-382](#)).
7. The Office of Human Resources will also use the [JSRCC Family and Medical Leave Memorandum \(Attachment A\)](#) to inform the eligible employee of job position, medical certification documentation, or benefit issues related to the approved family

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D. Management of family and medical leave records

1. The Office of Human Resources is required to establish, keep, and preserve records pertaining to its obligations under FMLA.
2. The Office of Human Resources will retain all records regarding the FMLA for a period of at least three (3) years.
3. The Office of Human Resources will ensure that the required records include the following:
  - a. basic payroll and identifying employee data;
  - b. leave designated as FMLA leave, both paid and unpaid, and the dates employee used leave;
  - c. copies of employee's notices of leave furnished to the college;
  - d. records of premium (i.e., health, etc.) payments; and
  - e. records of any dispute between the agency and an employee regarding designation of leave as FMLA leave.
4. The Office of Human Resources will ensure that records and documents relating to medical certifications, re-certifications, or medical histories of employees or employees' family members are maintained in separate files/records and treated as confidential medical records except for the following:
  - a. supervisors and managers may be informed regarding necessary restrictions on work duties and necessary accommodations;
  - b. first aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition(s) might require emergency treatment; and,
  - c. government officials investigating compliance with the FMLA (or other pertinent law) will be provided relevant information upon request.

V. Other Information:

[Department of Human Resource Management Policy 3.05](#), Compensation

[Department of Human Resource Management Policy 4.20](#), Family Medical Leave

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[Department of Human Resource Management Policy 4.21](#), Parental Leave

[Department of Human Resource Management Policy 4.55](#), Traditional Sick Leave

[Department of Human Resource Management Policy 4.57](#), Virginia Sickness and Disability Program

[JSRCC Form No. 35-0001](#), Family and Medical Leave Request

[JSRCC Form No. 35-0005](#), Family and Medical Leave Request to Care for Covered Military Servicemember

[JSRCC Family and Medical Leave Memorandum \(Attachment A\)](#)

Above link -- begin with Reynolds vs JSRCC

U.S. Department of Labor Forms:

- [WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition \(PDF\)](#)
- [WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition \(PDF\)](#)
- [WH-381 Notice of Eligibility and Rights & Responsibilities \(PDF\)](#)
- [WH-382 Designation Notice \(PDF\)](#)
- [WH-384 Certification of Qualifying Exigency for Military Family Leave \(PDF\)](#)
- [WH-385 Certification for Serious Injury or Illness of a Current Servicemember – for Military Family Leave \(PDF\)](#)