

Title:

Family and Medical Leave Act - FMLA

HR Policy No: 40.001

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Purpose

This policy is intended to encompass the federal Family and Medical Leave Act (FMLA), the Rhode Island Parental and Family Medical Leave Act (RIPFMLA), and federal/state law entitlements which govern family and medical leaves. Family and Medical Leaves are leaves of absence available to qualifying faculty and staff for child care, personal medical care, family medical care, and care for covered service members of the Armed Forces.

Providence College abides by all requirements of the federal Family & Medical Leave Act, the Rhode Island Parental and Family Medical Leave Act, and/or other state law entitlements. In the event any questions arise as to the meaning or application of these policies, the following shall apply: 1) if the question involves FMLA and/or RIPFMLA rights of the employee or the employer, those laws will decide the issue; and 2) all other issues will be resolved by the College at its sole discretion. Employees represented by a bargaining unit are subject to the terms of the above and their respective collective bargaining agreement. Members of the ordinary faculty are governed by the faculty handbook and/or related documents addressing leaves of absence.

Applicability

All Full-time Administrators, Staff, and Faculty, as well as Part-time Employees if applicable

Policy

Eligibility Requirements

Under the federally-mandated FMLA, an employee may be eligible for up to twelve (12) weeks of Family and Medical Leave if (1) the employee has worked for the College for at least twelve (12) months, and (2) the employee has worked for the College for at least 1,250 hours during the twelve (12) months prior to the leave. A qualifying employee may also be eligible for one additional week of leave, once in any two consecutive calendar years, under the state-mandated Rhode Island Parental and Family Medical Leave Act (RIPFMLA). Please see exception for military service members listed below.

Types of Family and Medical Leaves

Employees may qualify for any of four types of Family and Medical Leaves. Throughout this policy, the term Family and Medical Leave refers to any of these types of leaves:

1. Birth, Adoption and Child Care Leave

An employee may take a Birth, Adoption, or Child Care Leave because of the birth, adoption, or foster care placement of a child (under 18 years of age, or children over 18 who are incapable of self-care), and for care of that child. The leave must be completed within twelve (12) months of the child's birth, adoption, or foster care placement.

2. Family Member Leave

An employee may take a Family Member Leave to care for a seriously ill or injured spouse, parent, child or parent-in-law.¹ The illness or injury must be a serious health condition, meaning a physical or mental condition that involves inpatient or other continuing treatment by a health care provider. If the leave is for the care of a child, the child must either be under age 18 or unable to care for himself or herself due to a mental or physical disability.

3. Personal Medical Leave

An employee may take a Personal Medical Leave because of an illness or injury that makes the employee unable to perform his or her job. As with a Family Member Leave, the illness or injury must be a serious health condition. A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves either: any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; or continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) due to:

a. A health condition (including treatment therefore, or recovery therefrom) lasting more than five (5) consecutive days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:

* treatment two or more times by or under the supervision of a health care provider (the two visits must occur within thirty (30) days from onset of initial incapacity with the first visit occurring within seven (7) days); or

* one treatment by a health care provider with a continuing regimen of treatment: or

b. Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; or

c. A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider (two (2) or more visits per year for the same condition),

¹Leave to care for an in-law is only available under Rhode Island state law, and that law mandates only 13 weeks of leave in any two-year period. Therefore, if you request leave to care for an in-law, your leave for this purpose will be so limited.

and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; or

d. A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; or

e. Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than five (5) days if not treated (e.g., chemotherapy or radiation treatments for cancer).

4. Military Family Leave

In Accordance with the National Defense Authorization Act and the federal Family Medical Leave Act, eligible employees may take leave for one or more of the following reasons:

a. Military Caregiver Leave

Eligible employees who are family members of covered service members (spouse, parent, child, or next of kin) may take up to twenty-six (26) weeks of leave in a single twelve (12)-month period to care for a covered service member with a serious illness or injury incurred in the line of duty on active duty that renders the service member medically unable to perform the duties of his/her position. A covered service member is a member of the Armed Forces, including the National Guard or Reserves. Employees may take a combination of Military Care Giver leave and other FMLA leave in the twenty-six (26) week period; however, no more than twenty-six (26) weeks of leave may be taken per twelve (12)-month period regardless of the types of leave taken.

b. Qualifying Exigency Leave

Eligible employees (spouse, child, or parent of a covered service member) with a covered service member serving in the National Guard or Reserves may take up to twelve (12) weeks of leave during a twelve (12)-month period to use for "any qualifying exigency" arising out of the fact that a covered military member is on active duty or called to active duty status in support of a contingency operation. Qualified exigencies may include short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities agreed to by the employer and employee.

Guidelines

Notice of Scheduling of Leave

As a result of any absence for illness or injury that extends beyond five (5) working days, an employee is required to supply enough information to determine if he/she may have a serious health condition to qualify for FMLA. An employee should give the appropriate human resources representative, and his/her

supervisor, verbal and written notice as soon as he or she reasonably can, but in no case beyond five working days. The employee will receive an Application for Family or Medical Leave form which must be completed and submitted to the office of human resources for review, along with a doctor's certification, indicating the anticipated disability period. All medical-related information will be maintained confidentially.

When the leave is a Birth, Adoption, or Child Care Leave, the employee must generally give at least two (2) weeks' notice of the leave. Whenever possible, a one (1)-month notice is preferred. If an employee plans to take a Family Member Leave, a Military Care Giver Leave, or a Personal Medical Leave because of planned medical treatment, the employee must make an effort to schedule the treatment to reduce the disruption of the department. At least thirty (30) days written notice of the leave should generally be given to the office of human resources.

In some cases, an employee will not be able to give the full amount of advance notice required for a Birth, Adoption or Child Care Leave, Family and Medical Leave for planned medical treatment, Qualified Exigency Leave, or for a Military Care Giver Leave. When an employee cannot give the generally required notice for a legitimate reason, the employee should give as much notice as possible under the circumstances. An employee's failure to give adequate notice may delay the employee's right to take a Family and Medical Leave.

Confirmation of Leave

Once an employee's request to take a Family and Medical Leave is approved, the human resources representative will give the employee notification confirming receipt of the request for the leave and setting forth some of the basic employee rights and obligations. The rights and obligations set forth in the notice are considered part of this policy.

Employees requesting a Personal Medical Leave, a Family Member Leave, or a Military Care Giver Leave will be required to provide medical verification on the Certification of Physician or Practitioner form. All medical certifications will be maintained in a separate confidential file. Employees on a Personal Medical Leave, a Family Member Leave, or a Military Care Giver Leave for which medical verification is initially required, may need to provide medical verification every thirty (30) days (or more frequently due to changed circumstances, new information, or a request for a leave extension).

Providence College reserves the right to request periodic updates concerning an employee's medical status and intent to return to work. Employees are expected to be fully responsive to all terms required by the approved leave.

Length and Restoration Rights

A. General

As a Rhode Island employer, Providence College extends to eligible employees up to a total of thirteen (13) weeks for the reasons described above in the first year of any two (2) consecutive calendar years, and up to twelve (12) weeks in the second year of that same period. Approved leaves are in the aggregate.

Leaves that qualify under both FMLA and RIPFMLA will be counted towards the entitlement under both laws concurrently, as well as the College's leave of absence policies. For example, an employee would not be able to take thirteen (13) weeks of maternity leave and additional weeks of disability leave in a one (1) year period. The College currently uses a twelve (12)-month, roll-forward from initial date of illness method to measure the one-year and two-year periods, but reserves the right to make future changes. Workers' Compensation leave and contractual leave² will be counted toward any statutory entitlement and will run concurrently with these leaves.

In addition, under RIPFMLA, an eligible employee may be granted ten (10) hours of leave per twelve (12) month period to attend school conferences or other school-related activities for a child for whom the employee is the parent, foster parent, or legal guardian.

Requests for any extensions beyond the approved leave period must be made in writing before the end of the designated FMLA leave. Providence College has the right to deny any leave that extends beyond the period(s) provided by FMLA and/or RIPFMLA. Additional information is provided in section D, Extensions.

B. Nature of Leave

A Family Member Leave or a Personal Medical Leave may be taken through either a reduced working schedule or intermittently if such an arrangement is certified to be medically necessary. Reduced Schedule Leave³ or Intermittent Leave⁴ is not available for child care related to birth, adoption or foster care. Neither is it available to care for a parent-in-law. If an employee qualifies for a Family Member Leave or a Personal Medical Leave on a reduced work schedule or intermittent basis, Providence College may transfer the employee temporarily to a position for which he or she is qualified if, in the College's opinion, the alternative position would better accommodate the recurring leaves.

C. Special Rule Applicable to Spouses Who Are Both Employed By Providence College

If Providence College employs both spouses, the total Birth, Adoption or Child Care Leave to which they will be entitled together will be twelve (12) weeks (or thirteen (13) weeks by RI law) in any twelve (12)-month period.

D. Extensions

²FMLA does not supersede any collective bargaining agreement which provides greater family or medical leave rights. However, employees must comply by providing all relevant documentation requested.

³**Reduced Schedule Leave** involves a reduction in daily or weekly hours of work, and would usually be available only when a physician so requires.

⁴**Intermittent Leave** involves leave taken in separate blocks of time for the same illness. Normally to be used for doctor appointments or for periodic treatments, e.g. physical therapy or chemotherapy.

Requests for extensions beyond the approved twelve (12) or thirteen (13)-week leave period must be made in writing and must be accompanied by the appropriate medical documentation, a minimum of five (5) work days in advance of the expiration of the leave. The length of time available for extension will be considered on a case-by-case basis.

If an extension is granted, Providence College will not guarantee reinstatement to the employee's same position. Decisions regarding the granting of an extension beyond the FMLA requirements and reinstatement to a former position after an extension, will be made in Providence College's sole discretion, after considering factors such as the purpose of the leave extension, the employee's length of service, the employee's attendance record, the employee's position, and Providence College's assessment of its needs. Failure by the employee to return to work at the end of the approved leave period extension will be considered a voluntary resignation, unless an additional extension has been approved in advance, and in writing, by the office of human resources.

E. Reinstatement

1. General

When an employee returns from an approved leave that does not exceed the statutory entitlement (12 or 13 weeks), every effort will be made to return the employee to the same position, or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment, if available. The employee is not guaranteed reinstatement if he or she would have been laid off during the leave, had been hired for only a specific term and that term expired, or other similar circumstances.

Reinstatement includes full seniority to the date on which the leave began and through the time of approved leave. Failure to return to work at the end of the leave, or failure to request and receive an approved extension of the leave in writing, prior to the end of the leave, will be considered a voluntary resignation.

2. Certification Before Return

Before an employee may return to work from a Personal Medical Leave, the employee must submit to the office of human resources written certification from their health care provider that the employee is able to resume his or her job. If applicable, the provider certification must include any and all restrictions related to the medical condition and the employee's ability to return to his or her position. The College reserves the right to have the employee examined by a doctor of its choice, at the College's cost.

3. Limitations

Adverse Actions during the Leave

An employee will not be entitled to more favorable employment terms as a result of taking a Family and Medical Leave than he or she would have had if no leave had been taken. Thus, an employee who takes a Family and Medical Leave will be subject to any pay or benefit reductions or other adverse actions,

including layoff that the employee would have experienced if he or she had not been on a Family and Medical Leave.

Key Employees

Key employees are faculty and staff whose salaries place them among the highest paid 10% of the College's employees. Key employees who have taken more than thirteen (13) weeks of leave in any two-year period may be denied reinstatement if that would cause substantial and grievous economic injury to the College's operations. You will be notified of your status as a key employee when you request leave, and you will be informed if your reinstatement rights will be denied.

Pay and Benefits

A. Pay

Family and Medical Leaves are not paid leaves, except to the extent that an employee is eligible for another benefit based on the reason for the leave. If an employee takes a Personal Medical Leave, he or she will be required to use any and all paid sick leave that has already accrued until that is exhausted. If still unable to work, the College may require the employee to use accrued vacation time. Paid sick and vacation time used will be in accordance with the Paid Sick and/or Vacation Leave Policies and will run concurrently with the unpaid leave. Sick time and vacation time will accrue for a maximum of 12/13 weeks during an approved FMLA Leave. Sick time accrued during an approved leave is not available until the employee returns to work. If an employee takes a leave for the birth or adoption of a child, pay may continue as described in the Parental Leave policy prior to the commencement of accrued sick and/or vacation time. A holiday occurring during a FMLA leave would be paid in accordance with the College's policy on paid holidays if the employee is in a paid leave status.

B. Maintenance of Medical and/or Dental Benefits

During a Family and Medical Leave, Providence College will continue the employee's medical and/or dental insurance coverage, provided that the employee continues to pay for the regular employee share of such coverage on a timely basis. When the leave is approved, the employee will receive instructions on how to pay his/her share of medical and/or dental insurance premiums. The College reserves its right to deduct the employee's share of medical and/or dental insurance premiums that may be due from any pay received during or at the end of a leave. If the employee fails to pay his or her share during the leave, the College reserves its right to cancel the insurance(s) after thirty (30)-days' notice, and after notifying the employee of his or her COBRA rights. Employees enrolled in the medical and/or dental insurance buyout remain eligible to receive the buyout payment only for the initial 12 or 13-week approved leave period. If a leave exceeds 12 or 13 weeks in any one-year period, Human Resources will advise the employee of his/her status regarding the continuation of College-provided insurances.

If the employee fails to return to work at the end of the leave, the employee may be liable to Providence College for any medical and/or dental insurance premiums paid on the employee's behalf unless his or her failure to return is due to the continuation, recurrence, or onset of another serious health condition. The

College may deduct amounts owed from any final paycheck and/or pursue other legal remedies to collect those amounts.

C. Other Benefits

Other core benefits such as life insurance and long-term disability insurance will continue during a qualified Family and Medical Leave. Retirement contributions will only be made during the paid portion of a FMLA/RIPFMLA leave. Employees on a Family and Medical Leave will continue to be responsible for their contribution for other benefits such as vision insurance, flexible spending accounts, and other optional deductions (e.g. pet insurance, voluntary and dependent life insurance, P.C. Development Fund, etc.). An employee's length of service for the retirement plan will not be reduced during an approved Family and Medical Leave. Unless otherwise indicated, there is no accrual of benefits beyond the FMLA period.

Medical Records

Documents relating to medical certifications, re-certifications, or medical histories of employees or employee's family members will be maintained separately and treated as confidential medical records, except that in some legally recognized circumstances, the records (or information in them) may be disclosed to supervisors and managers, first aid and safety personnel, or government officials.

Responsibility

The associate vice president for human resources, or his/ her designee, is responsible for overall administration of this policy.