

# Procedure: 4.5.1p. (III.U.7) OFTC Family and Medical Leave Act (FMLA)

## Procedure

The Family and Medical Leave Act (FMLA) provides eligible employees the opportunity to take job protected leave for certain specified reasons. The maximum amount of leave an employee may use is either 12 or 26 weeks within a twelve 12-month period depending on the reasons for the leave.

## THE FMLA PROCESS

It is the employee's responsibility to request coverage for any absence (annual, sick, personal, LWOP, disability) that may qualify for FMLA. Generally, employees must give 30-days' advance notice of the need for FMLA coverage. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the procedures. Employee's do not have to share a medical diagnosis, but must provide enough information so the employer can determine if the leave qualifies for FMLA.

This may be done by notification verbally or written to the supervisor or a representative of the Office of Human Resources.

## Notice of Eligibility and Rights and Responsibilities

- 1) When an employee's request for family leave, or when Oconee Fall Line Technical College acquires knowledge that an employee's leave may be for an FLMA-qualifying reason, OFTC must notify the employee, in writing, of the employee's eligibility to take family leave within 5 business days, absent extenuating circumstances.
- 2) All FMLA absences for the same qualifying reason are considered a single leave and employee eligibility (as to the reason for leave) does not change during the applicable 12- month period.
- 3) The Notice of Eligibility and Rights & Responsibilities (Attachment: Form WH-381) must be completed by OFTC in its entirety and state whether the employee is eligible for family leave. Part of this process may require further documentation Attachment.

WH-380-E, Certification of Health Care Provider for Employee's Serious Health Condition; Attachment WH-380-F, Certification of Health Care Provider for Family

Member's Serious Health Condition; Attachment WH-384-R, Certification of Qualifying Exigency for Military Family Leave; Attachment WH-385-V, Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave; Attachment WH-385, Certification for Serious Injury or Illness of a Current Service Member. The notice will include the deadline (at least 15 calendar days later) for any needed supporting documentation.

If the employee is not eligible, all reasons why must be noted.

## Designation Notice

- 1) If OFTC has sufficient information to determine whether a leave is FMLA-qualifying, the employee must be notified in writing of this decision within 5 business days using Designation Notice (FMLA) (Attachment: Form WH-382).
- 2) The completed notice must include information regarding whether paid leave will be used during the period of absence and accompanying fitness-for-duty certification requirement. Pursuant to the provisions of TCSG Procedure 4.5.1p, an employee must provide a fitness-for duty certificate from his/her health care provider before returning to work. Therefore, to properly address an employee's ability to perform the essential functions of his/her job upon return from FLMA leave, OFTC must include a list of those functions or attach a job description to the Designation Notice (Form WH-382).
- 3) The designation notice need only be provided once for each qualifying reason during the applicable 12-month period.
- 4) The amount of leave (such as the number of hours, days, or weeks) to be counted against the FMLA entitlement must be specified if known at the time OFTC designates the leave as FLMA qualifying. If this is not possible at the time the designation is made (e.g., the leave is unforeseeable), the college must provide this information upon request by the employee, but no more often than once in a 30-day period and only if leave was taken during that period. The amount of leave notice must be made in writing no later than the following payday.
- 5) If both military caregiver and the serious health condition of a family member leave apply, OFTC must designate the leave as military caregiver leave to permit up to 26 weeks of leave.
- 6) Failure to provide required notice may constitute interference with, restraint of, or denial of the exercise of an employee's FMLA rights and subject OFTC to potential liability for compensation and benefits lost by reason of the violation.
- 7) OFTC may retroactively designate leave, provided that the college's failure to designate such leave in a timely manner has not caused harm or injury to the employee.

In all instances in which leave qualifies for FMLA protection, OFTC and the employee may mutually agree to the retroactive designation.

## General Provisions

1) The DOL Notice to Employees of Rights Under the FMLA (Attachment: WH-1420) must be posted prominently so that it can be readily seen by applicants and employees. A copy of the notice should be provided to all newly hire employees.

2) To the extent required by law, OFTC will inform an employee whether he/she is eligible for leave under the FMLA. If otherwise eligible, OFTC will provide an employee with a notice that specifies any additional information required as well as his/her rights and responsibilities. If an employee is not eligible, OFTC will provide a reason for the ineligibility. OFTC will also inform an employee if leave will be designated as FMLA-protected and, to the extent possible, note the amount of leave counted against his/her leave entitlement. If OFTC determines that the leave is not FMLA-protected, the employee will be notified.

3) Upon returning from FMLA leave, an employee will typically be restored to his/her original job or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions.

4) The FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided under the FMLA, or discharge or discriminate against any person for opposing any practice made unlawful by the FMLA, or for involvement in any proceeding under or relating to the FMLA. While OFTC encourage its employees to bring any concerns or complaints about compliance with the FMLA to the attention of OFTC's Office of Human Resources, applicable FMLA regulations require all covered employers to advise employees that they may file a complaint with the U.S. Department of Labor or bring a private lawsuit against the TCSG. Additionally, the FMLA does not impact any Federal or State law pertaining to discrimination, or supersede any State or local law which provides greater family or medical leave rights.

5) Medical information obtained as a result of an employee's serious health condition, as well as all medical information gathered during an employee's employment with the system office or technical college, is considered confidential. Access to this information, which is housed separately from work-related documents collected during the scope of an individual's employment and retained in an employee's personnel file, is restricted to system office/technical college representatives having a legitimate business reason to view the materials.

6) An employee's failure to return to work as scheduled after FMLA leave or who (without authorization) exceeds the 12-week entitlement or the 26-week entitlement in

the case of military caregiver leave, will be subject to disciplinary action consistent with applicable State Board policy.

7) An employee providing false or misleading information or intentionally omitting material information in connection with an FMLA leave will be subject to disciplinary action consistent with applicable State Board policy and Technical College System of Georgia policy.

Attachments:

Form WH-381 The Notice of Eligibility and Rights & Responsibilities  
Form WH-380-E Certification for Employee's Serious Health Leave  
Form WH-380-F Certification for Family Member's Serious Health Leave  
Form WH-384-R Certification for Qualifying Exigency for Military Leave  
Form WH-384-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave  
Form WH-385 Certification for Serious Injury or Illness of a Current Service Member  
Form WH-382 Designation Notice  
Poster WH-1420 Employee Rights under the FMLA

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Revised: