



## FAMILY AND MEDICAL LEAVE POLICY

### Policy

It is the policy of Skidmore College to provide its employees time off (paid and unpaid) necessitated by illness or family care in accordance with the federal Family and Medical Leave Act of 1993 (the “FMLA”) as amended. You are eligible to take up to 12 weeks of unpaid family / medical leave (“FMLA Leave”) within any consecutive 12 month period and be restored to the same or equivalent position upon your return from leave provided you have worked for the College at least 12 months, and for at least 1250 hours in the last 12 months.

### Eligibility for Leave

To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

The employee must have worked for the employer for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of the week or if the employee is on leave during the week.

The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.

### Leave Categories & Benefits

#### *Married Spouses Employed By the College*

If a husband and wife both work for the college and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent in-law) with a serious health condition, the husband and wife may only take a combined total of 12 weeks of leave. If a husband and wife both work for the college and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

- 1) *The birth of a child and in order to care for that child.*
- 2) *The placement of a child for adoption or foster care and to care for the newly placed child.*

“Child” is defined as any biological, adopted or foster child, a step child or legal ward of an eligible employee less than 18 years old, unless the child is incapable of self-care because of a mental or physical disability. Leave is also available when an employee has the day-to-day responsibility for caring for a child and is acting as that child’s parent. For example, a grandmother or older sibling may be acting as a parent to children who have lost a biological parent. Similarly, an employee can take leave to care for an individual who acted as a parent to the employee when the employee was a child.

Leaves for the birth, adoption or placement of a foster child must be taken within twelve (12) months of the event.

Leave may be taken on an intermittent or reduced schedule basis at the sole discretion of the college. This is not required by the act.

*3) To care for a spouse, child or parent with a serious health condition (described below).*

*4) The serious health condition (described below) of the employee.*

An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee’s position.

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 licensed health care provider.

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 what illnesses are covered under this FMLA policy or under the college’s sick leave policy are encouraged to consult with the HR department.

The college may require an employee to provide a doctor’s certification of the serious health condition. The certification process is outlined in section H of this policy.

If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the college may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

5) *A covered family member's active duty or call to active duty in the Armed Forces.*

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to active military duty or who is already on 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. The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military events and activities, 3) child care and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

“Covered active duty” means:

(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, United States Code.

The leave may commence as soon as the individual receives the call-up notice. This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.

Employees requesting this type of FMLA leave must provide proof of the qualifying family member's call-up or active military service before leave is granted.

(Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave, except that the person does not have to be a minor.)

6) *To care for an injured or ill covered service member.*

This leave may extend to up to 26 weeks in a 12-month period for an employee whose spouse, son, daughter, parent or next-of-kin is injured or recovering from an injury suffered while on active military duty and who is unable to perform the duties of the service member's office, grade, rank or rating. Next-of-kin is defined as the closest blood relative of the injured or recovering service member. An employee is also eligible for this type of leave when the family service member is receiving medical treatment, recuperation or therapy, even if the service member is on temporary disability retired list.

The term “covered service member” means:

(a) 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 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 a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

The term “serious injury or illness”:

(a) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an 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 the Armed Forces) and 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 a member of the National Guard or Reserves) at any time during a period when the person was a covered service member, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on an 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 the Armed Forces) and that manifested itself before or after the member became a veteran.

Employees requesting this type of FMLA leave must provide certification of the family member or next-of-kin’s injury, recovery or need for care. This is the only type of FMLA leave that may extend an employee’s leave entitlement beyond 12 weeks to 26 weeks. Other types of FMLA leave are included with this type of leave totaling the 26 weeks.

An eligible employee can take up to 12 weeks (or up to 26 weeks of leave to care for an injured or ill service member) under this policy during any 12-month period. The college will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the college will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks (or 26 weeks for the care of an injured or ill service member) of available leave, with the balance remaining being the amount the employee is entitled to take at that time.

### **Notice of Leave**

If your need for FMLA Leave is foreseeable, you must give the College at least 30 days prior written notice. The notice must be sufficient to make the College aware that you need FMLA Leave and the anticipated timing and duration of such leave. If this is not possible, you must at least give notice as soon as practicable (within 1 to 2 work days of learning of your need for leave). Failure to provide such notice may be grounds for delay of leave.

Additionally, if you are planning to take FMLA Leave because you or your covered relation needs a medical treatment for a “serious health condition,” you must consult with the College first regarding the dates of such treatment and make a reasonable effort to schedule leave so as not to unduly disrupt operations, subject to the approval of the health care provider. Where the need for FMLA Leave is

not foreseeable, you are expected to notify the College within 1 to 2 workdays of learning of your need for FMLA Leave, except in extraordinary circumstances. The College has Request for Family / Medical Leave forms available from the Human Resources Department. You should use these forms when requesting FMLA Leave.

The college will provide individual notice of rights and obligations to each employee requesting leave within two business days or as soon as practicable.

### **Medical Certification**

If you are requesting FMLA Leave because of your own or a covered relation's "serious health condition," you and the relevant health care provider must supply appropriate medical certification. You may obtain Medical Certification Forms from the Human Resources Department. If you provide at least 30 days advance notice of FMLA Leave, you should also provide the medical certification before FMLA Leave begins. Failure to provide requested medical certification in timely manner may result in denial of leave until it is provided.

The College, at its expense, may require an examination by a second health care provider designated by the College. If the second health care provider's opinion conflicts with the original medical certification, the College, at its expense, may require a third, mutually agreeable health care provider to conduct an examination and provide a final and binding opinion. The College may require subsequent medical recertification at any reasonable interval. However, the College may not request recertification more often than every 30 days unless you request an extension of FMLA Leave, circumstances described in the previous certification have changed, or the College receives information that casts doubt upon the continuing validity of the certification. Failure to provide requested certification within 15 days, if such is practicable, may result in delay of further leave until it is provided.

### **Service Member-Related Leave Documentation**

#### **Documentation of the Covered Family Member's Active Duty or Call to Active Duty in the Armed Forces**

Employees requesting this type of service member FMLA leave must provide proof of the qualifying family member's call-up or active military service. This documentation may be a copy of the military orders or other official Armed Forces communication.

#### **Documentation of the Need for Service member FMLA Leave to Care for an Injured or Ill Service member**

Employees requesting this type of Service member FMLA leave must provide documentation of the family member's or next-of-kin's injury, recovery or need for care. This documentation may be a copy of the military medical information, orders for treatment, or other official Armed Forces communication pertaining to the service member's injury or illness incurred on active military duty that renders the member medically unfit to perform his or her military duties.

### **Reporting While On Leave**

If you take FMLA Leave because of your own “serious health condition” or to care for a covered relation, you must contact your supervisor on a periodic basis regarding the status of the condition and your intention to return to work. In addition, you must give notice as soon as practicable (within 2 work days if feasible) if the dates of FMLA Leave change or are extended or initially were unknown.

### **Paid Leave as FMLA Leave**

If you are entitled to FMLA Leave for any reason, such leave is unpaid. However, the availability of paid leave affects your entitlement to unpaid FMLA Leave in the following way. You should note that additional rules may apply if you are covered by a collective bargaining agreement.

If you request FMLA Leave and you have unused paid leave available, the College has the right to require substitution of at least 5 days of paid leave for unpaid FMLA Leave. Such leave shall be used in the following order: absence (if appropriate), vacation, and personal leave. The result of substitution is that the 5 days of paid leave will count against the 12 week FMLA Leave entitlement. For example, assume that employee E adopts a child in 2008 and requests 3 weeks of FMLA Leave. At the time of the request, E has no remaining absence leave but does have 2 weeks of unused paid vacation. E’s 3 week leave to adopt a child will consist of 1 week of paid vacation leave due to substitution and 2 weeks unpaid FMLA Leave. E will have one week of remaining paid leave available for use in 2008 and would be entitled to another 10 weeks of unpaid FMLA Leave during 2008 if another FMLA qualifying event were to take place.

You also have the right under FMLA to substitute any unused paid leave to which you are entitled for unpaid FMLA Leave. The College may not place limitations on your right to substitute paid leave for unpaid FMLA Leave.

If you are on leave pursuant to short-term disability or workers’ compensation for an illness or injury that is a “serious health condition,” the College’s policy is to count the disability or workers’ compensation leave periods concurrently with the FMLA Leave period. Therefore, any disability or workers’ compensation leave taken during a year will reduce the 12 week FMLA Leave period available for such year.

### **Medical and Other Benefits**

Leave under this policy does not result in the loss of any previously accrued seniority or employment benefits, but eligibility for benefits nor seniority will not accrue during leave.

During an approved FMLA Leave, the College will maintain your health benefits as if you continued to be actively employed. However, you have the right to discontinue group health coverage during FMLA Leave and be reinstated upon your return on the same terms and conditions that applied before your leave began. If paid leave is substituted for unpaid FMLA Leave, the College will deduct your portion of the health plan premium, if any, as a regular payroll deduction. If your FMLA Leave is unpaid, you must pay your portion of the premium, if any, directly to the College. If applicable, your health care coverage will cease if your premium payment is more than 30 days late.

If your payment is more than 30 days late, we will send you a letter to this effect. If we do not receive your co-payment within 15 days of this letter, your coverage may cease. In the event that you do not return to employment after you have completed your period of FMLA Leave, the College reserves its rights under applicable law to obtain reimbursement for the group health premiums it paid on your behalf while you were on FMLA Leave, including reducing any payments you are otherwise entitled to in connection with your termination of employment such as vacation pay or expense reimbursements unless you cannot return to work because of a “serious health condition” or other circumstances beyond your control. If your group health coverage is terminated while you are on FMLA Leave due to nonpayment of premiums and you return to employment with the College, you are entitled to reinstatement in the College’s group health plan.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee’s family member or a circumstance beyond the employee’s control, the college will require the employee to reimburse the college the amount it paid for the employee's health insurance premium during the leave period.

Pre-tax salary reduction contributions to Medical Reimbursement Accounts and Skidmore Employees Federal Credit Union deductions do not continue during periods of unpaid FMLA Leave.

### **Intermittent and Reduced Schedule Leave**

FMLA Leave because of a “serious health condition” may be taken intermittently (in separate blocks of time due to single health condition) or on a reduced leave schedule (reducing the usual number of hours you work per workweek or workday) if medically necessary. If FMLA Leave is unpaid, the College will reduce your salary based on the amount of time actually worked. In addition, while you are on an intermittent or reduced scheduled leave, the College may temporarily transfer you to an available alternative position that better accommodates your recurring leave and which has equivalent pay and benefits.

### **Returning from Leave**

If you take FMLA Leave because of your own “serious health condition” (except if you are taking intermittent leave), you are required to provide medical certification to the College that you are fit to resume work. Employees failing to provide this certification will not be permitted to resume work until it is provided.

An employee who takes leave under this policy will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or virtually identical in terms of pay, benefits and working conditions.

The college may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

However, if a reduction in force has occurred while an employee is on leave under this policy, and the eligible employee would have been terminated in conjunction with that reduction in force, the eligible employee is not entitled to reinstatement with the college.

An employee who fails to report to work promptly at the end of the approved leave period will be considered to have voluntarily terminated.

### **Extended Leave for Disability/Serious Health Condition**

If you can not return to work after the initial 12 week period, you must submit medical certification of your continued serious health condition in advance for each month that the leave is extended.

### **No Work While On Leave**

The College's policy is that the taking of another job while on FMLA Leave or any other authorized leave of absence is grounds for immediate termination.

### **State and Local Family and Medical Leave Laws and Collective Bargaining Agreements**

Where State or local family and medical leave laws or collective bargaining agreements offer more protections or benefits to employees, the protections or benefits provided by such laws or agreements will apply. This guideline may be superseded by Federal or State law if the associate is entitled to a more generous leave or other provisions.

### **Supervisor Procedures**

When an employee requests leave under the Family and Medical Leave Policy, they must complete a Request for Family and Medical Leave form and forward it to their Supervisor and Department Head for approval. The approved request form should be sent to the Human Resources Department for final approval and processing. If there is a question of approval, the Supervisor should contact the Human Resources Department. Request for Family and Medical Leave forms are located in the Human Resources Department.

The supervisor should communicate with the employee during the leave and obtain proper documentation authorizing the employee's return to work when applicable. Upon an employee's return from a leave of absence, the supervisor must notify the Human Resources Department immediately so that the payroll may be reactivated.