

# Family and Medical Leave Act (FMLA)

In August of 1993, the Federal Family and Medical Leave Act (FMLA) went into effect. The FMLA entitled eligible employees to take up to twelve (12) weeks of unpaid, job-protected leave in a 12-month period for the following specified family and medical reasons:

1. For the birth and care of the newborn child of the employee, provided the leave is taken within twelve (12) months following birth;
2. For placement with the employee of a son or daughter for adoption or foster care, provided the leave is taken within twelve (12) months following placement;
3. To care for an immediate family member (spouse, child, or parent) with a serious health condition;
4. To take medical leave when the employee is unable to work because of a serious health condition
5. Because of any qualifying exigency (as defined by regulations issued by the U.S. Department of Labor) arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active military duty or has been notified of an impending call or order to covered active military duty.

The FMLA also provides for “Service Member Family Leave,” by which “an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered service member shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the service member.” Service Member Family Leave shall apply to only one 12-month period for a given employee but shall not affect the employee’s eligibility to take up to 12 weeks of FMLA leave during a subsequent 12-month period.

An employee may be eligible to take Service Member Family Leave in a situation in which a covered service member 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.

Any employee who would like a determination on whether or not the employee would be eligible to take leave under the Service Member Family Leave provisions to care for a covered service member should contact the College’s Human Resources Office for assistance.

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days’ notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the College’s leave request procedures. Supervisors should contact the Office of Human Resources when an employee has requested FMLA leave or is absent from work for more than five (5) days due to an FMLA qualifying reason.

Any accrued leave, excluding compensatory time, must be used concurrently with FMLA leave. All accrued leave must be exhausted before the employee is entitled to unpaid FMLA leave. Any leave accrued and used by an employee which would qualify for FMLA leave will count towards the 12 weeks (or 26 weeks) of unpaid FMLA leave available to the employee. Upon return from FMLA leave, an employee is entitled to be restored to the same job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. In addition, an employee’s use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave. The FMLA also requires that health insurance benefits that an employee may have be maintained during the unpaid leave, provided that the level of contribution of the employer and the employee remains the same as it was prior to the beginning of the leave. The following is a statement of Beville State Community College policy on family and medical Leave.

For the purposes of the College’s Family and Medical Leave policy, a “leave year” shall be the period of time beginning from the first day of FMLA usage. For example: if an employee takes FMLA leave beginning June 1st, they will be eligible for another 12 weeks of FMLA leave the following year on June 1st. In order for a Beville State employee to be eligible for family and medical leave, the employee must have been employed with BSCC for at least twelve months and have worked at least 1,250 hours during the previous twelve months. Temporary employees shall not be eligible for family and medical leave unless the employee has worked at least 1,250 hours at BSCC during the previous twelve-month period. Each eligible employee shall be entitled to a total of twelve workweeks of family and medical leave, paid and unpaid combined, during each leave year.

Leave without pay beyond the twelve-week period provided for in the FMLA will be administered in accordance with leave policies of Bevill State Community College and the Alabama Community College System.

For the purposes of the application of the Family Medical and Leave Act, the following definitions shall apply:

1. PARENT: A biological or adoptive person or a person who stood in *loco parentis* (in the position or place of the parent) to an employee when the employee was a child.
2. CHILD: A son or daughter under the age of eighteen years, or one eighteen years of age or older who is incapable of self-care because of a mental or physical disability, who is:
  - a biological child,
  - an adoptive child,
  - a foster child,
  - a stepchild,
  - a legal ward, or
  - a child to whom the employee is standing in *loco parentis*.
3. SPOUSE: A husband or wife.
4. SERIOUS HEALTH CONDITION: an illness, injury, impairment, or physical or mental condition which involves inpatient care in a hospital, hospice, or residential medical care facility, or which involves continuing treatment by a health care provider.
5. NEXT OF KIN: For the purposes of Service Member Family Leave, the term “next of kin” means the nearest blood relative of the covered service member.
6. WORKWEEK: The days and hours an employee is generally scheduled to work each seven-day work period.

**Guidelines for FMLA Leave usage:**

- Accrued leave, excluding compensatory time, must be exhausted before the employee is entitled to unpaid FMLA leave.
- For leave taken for the birth of a child, the College will require the employee to use available accrued leave. However, leave may be used only during the period of labor, delivery, and recovery from delivery.
- A husband and wife who are both employed by Bevill State Community College and are both eligible for FMLA leave are permitted to take only a combined total of twelve weeks of family and medical leave during any twelve month leave period, when authorized for:
  1. the birth of a son or daughter or to care for the child after birth;
  2. placement of a son or daughter for adoption, for foster care, or to care for the child after placement; or
  3. to care for a parent (not a parent-in-law) or spouse with a serious health condition.

The employee may not take FMLA leave intermittently or on a reduced schedule for childbirth and birth-related childcare or adoption unless the employee and the College agree to such an arrangement. When medically necessary, the employee may request intermittent leave or partial leave in combination with a reduced work schedule to care for the employee's child, spouse, or parent who has a serious health condition, or because the employee has a serious health condition. In such cases, the College may require the employee to be reassigned temporarily to an available alternate position for which the employee is qualified and which has equivalent pay and benefits and better accommodates recurring periods of leave or the reduced work schedule. The College will require the employee to provide written documentation of the medical necessity for the intermittent leave or reduced schedule. When an employee is on an FMLA reduced work schedule, time not worked during the workweek will be charged against the employee's FMLA leave balance.

In order to receive family or medical leave, the employee must request such leave in accordance with the following guidelines:

1. BIRTH OR ADOPTION: The employee shall give the College not less than 30 days written advance notice of the employee's intention to take leave, subject to the actual date of the birth or the adoption. If the date of the birth or adoption requires leave to begin in less than 30 days, the employee shall provide such notice as soon as possible.
2. MEDICAL TREATMENT: When the leave is being requested in order to care for the employee's child, spouse or parent or because the employee has a serious health condition requiring scheduled treatments, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt College operations, subject to the approval of the appropriate health care provider. Generally, the employee must give notification of his or her intent to take such

leave at least 30 days in advance of the leave period. If the nature of the particular situation is such that the employee is not reasonably able to give 30 days of advance leave notice, then the employee must notify the College as soon as possible regarding the beginning date of the leave.

The employee shall be deemed to have applied for leave under these guidelines whenever the employee is on approved sick leave, whether or not the employee has given written notice of the employee's intent to take family or medical leave, if the reason for the leave taken is any of those reasons provided for in the College guidelines for family and medical leave usage. In any situation where the College is aware that the employee is taking paid sick leave for any of the reasons designated through the family medical leave guidelines, the employee shall be notified in writing by the College that all time spent on paid leave or leave without pay for such reasons shall be considered part of the twelve workweeks of leave required under the FMLA. If, after written notification by the College of the expiration date of available family and medical leave, the employee does not receive approval to remain on leave and does not report for duties at the next scheduled work day, the employee's failure to report to work may be considered by the College to be a resignation of employment.

If an employee requests family and medical leave relating to an adoption, the College will require that the employee provide reasonable proof of the adoption.

In the event that the employee may request a leave because of a serious illness of the employee or of the employee's child, spouse or parent, the College will require that the employee submit medical certification, which shall include the following information:

1. the date on which the serious health condition began;
2. the probable or estimated duration of the condition;
3. significant medical facts relating to the condition;
4. statement that the leave is needed to care for the child, spouse, or parent, and estimate of the amount of time which is needed; or statement that the employee is unable to perform the essential functions of the employee's position, whichever statement is applicable; and
5. where certification is necessary for intermittent leave for planned medical treatment, the dates on which the treatment is scheduled or expected to begin and the duration of each treatment.
6. In any situation where the College has reason to question the validity of the medical certification submitted, the College may require the employee to obtain the opinion of a second health care professional designated or approved by the College. Where the second opinion differs from the original certification provided, the College may require the employee to get a third opinion from a physician or a health care professional designated or approved jointly by the employer and the employee. In such cases, the third opinion shall be final and binding on the College and the employee. Where certification is required, the College may require that the employee submit subsequent recertification each thirty days. In any event where the College requires the employee to obtain a second or third opinion or submit a recertification, the co-payment or other out-of-pocket payment for the additional opinions and recertification shall be made by the College.

Employees taking leave under the FMLA are entitled to certain protection relating to their employment and benefits. In particular, they are entitled to the following:

- **REINSTATEMENT** - The employee shall be reinstated to the same position held when the leave began or one of the same pay grade, benefits, and other conditions of employment which the employee had at the time the leave began, unless the employee would otherwise have been transferred, terminated or laid off had the employee not taken the subject leave. The College may require the employee to submit periodic reports of his/her status and intention of returning to work. The College also may require that the employee submit a fitness for duty certification before returning to work.
- **SENIORITY** - Employees shall not earn any credit toward additional seniority for any period of time during which the employee is on leave without pay, but the employee shall retain any seniority which he or she holds at the time the leave began.
- **HEALTH BENEFITS** - The College shall maintain coverage for the employee under the College's group health plan the duration of the unpaid FMLA leave at the level and under the conditions which would have been provided if the employee had continued employment. If the employee does not return to work upon completion of the leave, the College may seek reimbursement from the employee for the premium payments made by the College, to the extent that such reimbursement is permitted under the State and Federal law. The exception to such reimbursement would

include the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control, which would prevent return to work. Employees on FMLA leave without pay shall receive their normal individual PEEHIP allotment for health insurance but shall be responsible for payment of dependent health care premiums.

- PROHIBITED ACTIONS - It is unlawful for an employer to interfere with, restrain, or deny any right provided by these guidelines or to discharge or in any other manner discriminate against an employee by imposing any practice made unlawful by these FMLA guidelines.
- PROTECTED ACTIVITY - It is unlawful for an employer to discharge or in any other manner discriminate against an employee because the employee does any of the following:
  - files any civil action, or institutes or causes to be instituted any proceeding under or related to the FMLA;
  - gives or is about to give information in connection with any inquiry or proceeding relating to any right provided by these FMLA guidelines;
  - testifies, or is about to testify, in any inquiry or proceeding relating to any right provided under these guidelines.
- ENFORCEMENT - Any employee who believes that the College's FMLA guidelines and/or the FMLA have not been applied properly at the College should notify the Office of Human Resources.