



## Policy HR 12.6 Family Medical Leave Act (FMLA), Family Leave Act (FLA) and Family Care Act (FCA)

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The Library provides leaves of absence to eligible employees in keeping with the requirements of the federal Family and Medical Leave Act (FMLA) and Washington State's Family Leave Act (FLA) and Family Care Act (FCA). Under these laws an eligible employee is entitled to paid leave, unpaid leave, or a combination of leaves for certain qualifying events. The Library retains the right to place the employee on the appropriate federal or state leave in conjunction with accrued paid leave until unpaid leave commences. The provisions below are summaries only of each law. For more detailed information, employees should contact the Library Director.

### **I. Family Medical Leave Act (FMLA) - federal law**

A Library employee who meets the eligibility criteria of having worked one thousand two hundred fifty (1,250) hours within the last twelve (12) months prior to the first day of the leave may take up to twelve (12) weeks of leave to care for him or herself or a family member with a serious health condition. "Worked time" excludes any vacation or sick leave the employee has used within the last twelve months. An employee who is represented by a collective bargaining agreement is required to use his/her accrued sick leave, and compensatory time immediately upon being placed on FMLA leave. The employee's accrued sick leave will be applied to the FMLA leave until it is exhausted, after which the balance of the leave will be taken as leave without pay. An employee may also choose to use his/her personal days and/or accrued vacation leave during FMLA leave, prior to taking leave without pay.

An employee requesting to use FMLA for the purposes of childbirth or adoption of a child must use the entire twelve (12) weeks of FMLA within one year of the first day of his or her FMLA leave.

Definition of terms under FMLA and in accordance with the collective bargaining agreement are as follows:

- a. Child: A biological, adopted, foster child, stepchild, legal ward, or a child of an employee standing *in loco parentis* who is under eighteen (18) years of age.
- b. Parent: Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood *in loco parentis* to the employee when the employee was a "son or daughter" as defined by FMLA. This term does not include parents "in law".
- c. Serious health condition: An illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care, or continuing treatment by a health care provider, or which involves a period of incapacity

of three (3) or more days absence from work and necessitates continuing treatment by a health care provider, or any period of incapacity due to pregnancy or prenatal care.

- d. Spouse: Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

Family Medical Leave Act leave will run concurrent with Worker's Compensation Leave and Family Leave Act except when the illness is due to pregnancy. In the case of the latter, the FLA begins once the child is born or is adopted.

Employees on FMLA leave will continue to receive coverage under the healthcare plan(s) in which the employee was enrolled at the time leave commenced. The Library shall make premium payments at the same level as were made prior to the leave commencement. Employees on FMLA, FLA or FCA leave will be responsible for paying their portion of all health plan premiums.

## **2. Family Leave Act (FLA) - Washington state law**

FLA (RCW 49.78) allows eligible employees leave from work for certain medical reasons, for birth or placement of a child, and for the care of certain family members (including registered domestic partners) who have a serious health condition. The benefits of FLA are built on the existing similar benefits available under FMLA in that the leave is unpaid, the employee may take up to twelve (12) weeks of leave for illness of self or family member, must have worked for the Library for twelve (12) months prior to the leave commencing, and must have worked one thousand two hundred fifty (1,250) hours within that twelve (12) month period.

The employee must take any accrued paid leave simultaneous with the FLA and FMLA.

In case of pregnancy, an employee is eligible for disability leave under FMLA and may use paid accrued leave for the period of sickness/temporary disability due to pregnancy. This is generally six to eight weeks. Once the child is born, the employee may be eligible for the full twelve (12) weeks of FLA.

## **3. Intersection of leaves of absence for pregnancy disability**

FLA must run after any pregnancy disability leave has ended. A female employee who qualifies for FLA may have at least 18 weeks of total leave, which is more than that provided by FMLA. FLA and pregnancy disability leave may not run concurrently, but FMLA will run concurrent with both FLA and pregnancy disability leave. If an employee is eligible for both FLA and pregnancy disability leave, the employee will be eligible for more leave under the two state laws together than the leave provided under FMLA. FLA is also available for qualified registered domestic partners whereas FMLA is not.

Additionally, an employee using the FMLA "qualifying exigency related to deployment" or acting as a military caregiver will not be using benefits under FLA, so such employees could qualify for an additional twelve (12) weeks of leave under FLA after exhausting their twelve (12) weeks of FMLA leave.

#### **4. Family Care Act (FCA) – Washington state law (RCW 49.12.265)**

All employees with accrued **paid** leave such as sick, vacation, holiday, or compensatory time may take FCA leave to care for a family member with a serious health issue. Family member is defined as spouse, registered domestic partner, child, parent, parent-in-law, grandchild or grandparent. “Child” includes a child under the age of eighteen (18) years, and an adult child with a disability.

FCA may be used for an employee to take care of a pregnant spouse or a registered domestic partner, during and after childbirth.

#### **5. Requesting FMLA or FLA**

- a. Notice: When the need for FMLA/FLA leave is foreseeable, the employee is required to give his/her supervisor at least thirty (30) days notice or provide notice as soon as practicable once the need for leave becomes known.
- b. Medical Certification Required: Any employee requesting Family and Medical Leave must submit a written request to his/her supervisor, and attach or produce the official FMLA medical certification form completed by a licensed medical practitioner as noted below. The form is available from the Library’s Administrative Operations staff.

Medical certification shall be submitted not later than fifteen (15) calendar days after the application is made. If the leave was foreseeable, failure to provide the medical certification within the required fifteen (15) days after application shall be cause to deny Family and Medical Leave until such time that acceptable medical certification is provided or obtained.

If the validity of the claim is disputed or unclear, the Library may require the employee to obtain a second opinion by a provider of the Library’s choice and at the Library’s expense. In the event of a dispute between the two providers, the Library may require the opinion of a third provider jointly selected by the Library and the employee, the cost of which will be borne by the Library. The opinion of the third party shall be binding.

#### **6. Automatic implementation of FMLA**

Even in the absence of a written request from the employee, if an eligible employee notifies the Library of an illness or health condition that could qualify for FMLA or FLA coverage, NOLS will initiate the appropriate FMLA notice and related paperwork and any time off will be designated as FMLA leave unless NOLS receives credible medical information that the employee does not qualify for FMLA leave.

#### **7. Approval of leave**

All requests for Family and Medical Leave require the approval of both the employee’s supervisor and the Library Director.

## **8. Conclusion of leave**

Should the employee fail to return to work at the conclusion of authorized Family and Medical Leave, the Library shall be entitled to recover from the employee any premiums paid for maintaining health coverage under this section, unless the reason is the continuation, onset or recurrence of a serious health condition. An employee will accrue paid leave while on paid status. An employee on unpaid status will not accrue paid leave.

## **9. Reinstatement from FMLA**

In accordance with the collective bargaining agreement, an employee returning from FMLA or FLA shall be reinstated to the following, providing the employee meets the minimum qualifications for the position in question:

- a. The same or equivalent position as was held by the employee when the leave commenced, or;
- b. A position with equivalent benefits and pay at a workplace within twenty miles of the employee's workplace when leave commenced.

If the Library's circumstances have so changed that an employee cannot be reinstated to the same or equivalent position, the employee shall be reinstated to any vacant position for which the employee is qualified, unless business necessity has dictated otherwise or the employee declines the reinstatement.

An employee may take FMLA or FLA intermittently in amounts no less than the minimum amount that can be processed in accordance with existing payroll and timekeeping processes.

## **10. Voluntary quit upon failure to return**

An employee who fails to return from a FMLA leave or a leave of absence without pay by the end of the period authorized, or who accepts full-time work with another employer while on FMLA leave, unless otherwise approved by the Library, shall be considered to have voluntarily resigned without notice and therefore they forfeit their reinstatement and separation rights unless the employee requests some form of reasonable accommodation. In that event, the Library will commence an interactive process to determine if any reasonable accommodation exists that would enable the employee to return to work without creating an undue hardship on the Library.

## **11. Administration**

The Library Director or designee is responsible for administering this policy.