



www.mybrcc.edu

TITLE: FAMILY AND MEDICAL LEAVE ACT

EFFECTIVE DATE: January 20, 2015

LAST REVISION: Initial*

Policy No. 211

POLICY STATEMENT

The Family and Medical Leave Act (FMLA) is intended to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity.

The FMLA entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

In compliance with the FMLA, it is the policy of Baton Rouge Community College (BRCC) to provide eligible employees up to twelve (12) workweeks (480 work hours) of “job-protected” FMLA unpaid leave during any twelve (12) month period for one or more of the following reasons:

- The birth of a child and to care for the newborn child;
- The placement of a child with the employee for adoption or foster care;
- To care for the employee’s spouse, child, or parent who has a serious health condition;
- The employee is unable to work due to his/her own serious health condition;
- Any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a military member on “covered active duty.”

Eligible employees who are the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness are entitled to twenty-six (26) workweeks of leave during a single twelve (12) month period to care for the covered servicemember (Military Caregiver Leave).

DEFINITIONS

For the purpose of this policy and procedure, the words and/or phrases listed below will be defined as follows:

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 and same sex marriage.

Son or Daughter – is defined as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is under age 18; or 18 or older and incapable of self-care because of a physical or mental disability at the time that FMLA leave is to commence. It does not matter if the onset of the disability occurs before or after the son or daughter turns 18 for purposes of FMLA leave, provided that the disability exists and renders the adult child incapable of self-care at the time the employee’s leave is to commence.



www.mybrcc.edu

Physical or Mental Disability – means a physical or mental impairment that substantially limits one or more of the major life activities of an individual as set forth in the Americans with Disabilities Act Amendments Act of 2008 (ADAAA).

Incapable of Self-Care – means that the individual requires active assistance or supervision to provide daily self-care in three or more “activities of daily living” due to a disability

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. This term does not include parents-in-law.

In Loco Parentis – means in the place of a parent. An employee who stands *in loco parentis* to a child is entitled to leave for bonding purposes or if leave is needed to care for the child with a serious health condition. An eligible employee is also entitled to FMLA leave to care for someone who stood *in loco parentis* to the employee when he/she was a child. Whether an *in loco parentis* relationship exists is dependent upon the specific facts of the case. Factors to be looked at in determining whether an *in loco parentis* relationship exists include:

1. The age of the child;
2. The degree to which the child is dependent on the person claiming in loco parentis status;
3. The amount of support, if any, provided; and
4. The extent to which duties commonly associated with parenthood are exercised.

A blood or legal relationship is irrelevant to determining *in loco parentis status*. For example, an employee who will share equally in the raising of an adopted child with a same-sex partner, but who does not have a legal relationship with the child, stand *in loco parentis* to the child. In addition, the fact that a child has a biological mother and father does not prevent a finding that another individual stands *in loco parentis* to the child.

Health Care Provider – is a provider who is one of the following:

1. A doctor of medicine or osteopathy authorized to practice medicine or surgery by the State in which the doctor practices;
2. A podiatrist, dentist, clinical psychologist, optometrist, or chiropractor authorized to practice in the State and performing within the scope of his or her practice, meaning authorized to diagnose and treat physical or mental health conditions (treatment by a chiropractor is limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist),
3. A nurse practitioner, nurse-midwife, clinical social worker, or physician assistant authorized to practice in the State and performing within the scope of his or her practice, meaning authorized to diagnose and treat physical or mental health conditions,
4. A Christian Science Practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts or
5. Any health care provider from whom the employer or the employer’s group health plan’s benefits manager will accept a medical certification.

NOTE: A “health care provider” includes a health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.



www.mybrcc.edu

BASIC PROVISIONS

It is unlawful to deny eligible employees FMLA leave for FMLA-qualifying conditions. It is also unlawful to consider an employee's use of FMLA leave as a negative factor in employment actions, such as hiring, promotions, performance ratings, discipline, etc.

The FMLA entitles eligible employees to take up to 12 (or 26 for Military Caregiver Leave) workweeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons and allows employers to require employees to use accrued paid leave balances for FMLA purposes. Accordingly, BRCC requires the use of applicable paid leave balances (annual, compensatory, and sick) for FMLA entitlements. When applicable leave balances are exhausted, leave without pay shall be granted in order to provide the employee with the full 12 (or 26, when applicable) workweek entitlement.

The 12-month eligibility period begins on the date the employee's initial FMLA leave begins.

FMLA may be taken on a continuous basis or intermittently (without a fixed schedule) or on a reduced work schedule (fixed schedule with reduced hours). Leave on an intermittent or reduced schedule will be granted when deemed appropriate.

Eligible Classified employees with serious health conditions will not be terminated under Civil Service Rule 12.6 (a) for exhaustion of sick leave unless the eligible employee has first been granted 12 weeks of family leave, paid or unpaid, during the past 12 months.

All BRCC Campus locations (statewide) are required to conspicuously post and keep posted on their premises the notice entitled Employee Rights and Responsibilities Under the Family and Medical Leave Act, which is distributed by the U.S. Department of Labor.

PROCEDURE

A. Employee Eligibility

An employee is eligible for FMLA leave if he/she meets the following requirements:

- Has been employed for a total of at least 12 months by the State of Louisiana;
- Has at least 1,250 hours of service for the State of Louisiana during the previous 12-month period

Employee eligibility is determined at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. An employee remains eligible for leave for that same qualifying reason during that applicable 12-month period. Eligibility may be re-tested when leave is for a different qualifying reason within that same 12-month period, or with the first instance of FMLA leave for any reason in a new 12-month period.



www.mybrcc.edu

Employee eligibility is subject to the following provisions:

1. The 12 months of employment need not be consecutive, but employment prior to a continuous break in service of seven (7) years or more is not counted unless the break in service is due to military obligation, or other written agreement; if an employee is maintained on the payroll for any part of a week, the week counts as a week of employment.
2. Both spouses are each entitled to their full 12 weeks of FMLA leave for their own serious health condition or to care for a spouse or child with a serious health condition.
3. Overtime hours are counted as hours actually worked. Paid leave and unpaid leave, including FMLA leave, are not counted as hours actually worked.
4. With respect to employees absent due to military service, months and hours that the employee would have worked, but for his/her military service, are counted towards the 12-months/1,250 hours of employment.
5. Spouses employed by the State of Louisiana are limited to a combined total of 12 workweeks of FMLA leave when taken for the birth or care of a child; the placement and/or care of a child for adoption or foster care; or to care for an employee's parent who has a serious health condition. If the husband and wife both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the husband and wife would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse took 6 weeks of leave to care a for a parent, each could use an additional 6 weeks due to his or her own serious health condition.
6. When spouses are both employed by the State of Louisiana and eligible for FMLA leave, they are limited to a combined total of 26 weeks for FMLA Military Caregiver Leave or for a combination of FMLA Military Caregiver Leave and all other FMLA leave during the single 12-month period during which Military Caregiver Leave is taken. When FMLA Military Caregiver Leave is taken in combination with FMLA for the birth and care of a child, placement of a child with the employee for adoption or foster care, or care for a parent with a serious health condition, the spouses are limited to a combined total of 12 weeks for the Non-Military Caregiver FMLA. When FMLA Military Caregiver Leave is taken in combination with FMLA for the employee's own serious health condition or to care for a child or spouse with a serious health condition, each spouse may take up to 12 weeks for the Non-Military Caregiver FMLA.

B. Qualifying Reasons for FMLA Leave

Eligible employees shall be granted leave for the following FMLA-qualifying leave:



www.mybrcc.edu

1. For the birth of a child and to care for the newborn child;
 - a. Both mother and father are entitled to up to 12 workweeks of FMLA leave for the birth and bonding of a new born child. Leave for bonding time must be completed during the 12-month period beginning on the date of the birth.
 - b. Pregnancy and childbirth are also considered FMLA-qualifying serious health conditions. The mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. A husband is entitled to FMLA leave if he is needed to care for his wife during her prenatal care or when she is incapacitated during pregnancy or following the birth of the child. Employees are not entitled to any additional leave for twins or multiple births.
2. For the placement with the employee of a child for adoption or foster care and to care for the newly placed child;
 - a. Employees may take FMLA leave before the actual placement of a child if an absence from work is required for the placement or adoption to proceed. For example, FMLA leave may be taken for required counseling sessions, court appearances or consultations with an attorney or doctor representing the child.
 - b. Multiple placements for adoption or foster care in a single leave year are separate FMLA-qualifying events. However, employees are not entitled to more than 12 weeks of leave for any combination of qualifying reasons in a single leave year.
3. To care for the employee's spouse, child, or parent who has a serious health condition;
 - a. For purposes of confirmation of family relationship, the employer may require the employee giving notice of the need for FMLA leave to provide reasonable documentation or statement of family relationship.
 - b. This documentation may take the form of a simple statement from the employee, a child's birth certificate, a court document, or other documentation connected with a foster care placement, such as the agreement between the state and the foster care provider. The employer is permitted to examine documentation, but the employee is entitled to the return of the official document submitted for this purpose.
4. For an employee's serious health condition that makes the employee unable to perform any of the essential functions of his/her job;
5. Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on "covered active duty"; and
6. To care for a covered servicemember with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.



www.mybrcc.edu

C. Serious Health Condition

1. General – for FMLA purposes:
 - a. A serious health condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment.
 - b. “Incapacity” means the inability to work, attend school, or perform other regular daily activities due to a serious health condition or its treatment or recovery.
 - c. “Treatment” includes examinations to determine if a serious health condition exists, evaluations of the condition, and actual treatment by or under the supervision of a health care provider to resolve or alleviate the condition. An examination or treatment requires a visit to the health care provider to qualify under FMLA; a telephone conversation is not sufficient. Treatment does not include routine physical, eye or dental exams.
2. The FMLA is not intended to cover short-term conditions for which treatment and recovery are very brief. Unless complications arise, the following conditions generally will not meet the definition of an FMLA serious health condition: the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease.
3. Conditions for which cosmetic treatments are administered, such as for acne or plastic surgery, do not qualify unless inpatient hospital care is required or complications develop that result in the condition meeting the definition of a serious health condition.
4. Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care.
5. A serious health condition involving continuing treatment by a health care provider includes any one of the following:
 - a. Incapacity and treatment
 1. A period of incapacity of more than 3 consecutive, full calendar days, and any subsequent treatment or period of related incapacity.
 2. A regimen of continuing treatment includes, for example, a course of prescription medication or therapy requiring special equipment.
6. Pregnancy or prenatal care
7. Chronic conditions
 - a. Any period of incapacity or treatment due to a condition which requires at least 2 visits per year for treatment by a health care provider and continues over an extended period of time.



www.mybrcc.edu

- b. Examples of chronic conditions that may meet the FMLA definition of a serious health condition include but are not limited to asthma, diabetes, epilepsy, migraine headaches, etc.
 - c. Chronic conditions frequently involve intermittent leave or leave on a reduced schedule. Absences attributable to incapacity for chronic conditions qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack.
- 8. Permanent or long-term conditions
 - 9. Conditions requiring multiple treatments

D. Employee Notice Requirements

When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee does not have to expressly assert rights under the FMLA or even mention the FMLA. When an employee seeks leave due to a FMLA-qualifying reason for which he or she has previously taken leave, the employee must specifically reference the qualifying reason for leave or the need for FMLA leave. This requirement applies to both foreseeable and unforeseeable leave requests.

An employee has an obligation to respond to an employer's questions designed to determine whether an absence is potentially FMLA-qualifying. Failure to respond to reasonable inquiries may result in denial of FMLA protection if the employer is unable to determine whether the leave is FMLA-qualifying.

1. *Foreseeable Leave*

An employee must provide the employer at least 30 days advance notice before FMLA leave is to begin. If 30 days notice is not possible, due to a change in circumstances or a medical emergency, the employee must give notice as soon as possible and practical. Whether FMLA leave is to be continuous or intermittent, notice need only be given one time, but the employee must advise the employer as soon as practicable if the dates of scheduled leave change or are extended, or were initially unknown.

An employee must provide at least verbal notice sufficient to make the employer aware that the employee needs FMLA-qualifying leave and the anticipated timing and duration of the leave. The employer may require the employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave. If the employee does not comply with the employer's policy and procedure, and no unusual circumstances exist, the FMLA-protected leave may be delayed or denied.



www.mybrcc.edu

The Employee must make a reasonable effort to schedule planned medical treatment so as not to unduly disrupt the employer's operations. An employee should consult with his/her employer prior to scheduling treatment in order to work out a schedule that best suits the employee's and employer's needs.

2. *Unforeseeable Leave*

When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to the employer as soon as possible under the facts and circumstances of the particular case. An employee must provide sufficient information for an employer to reasonably determine whether the FMLA may apply to the leave request. Calling in "sick" without providing more information is not considered sufficient notice to trigger an employer's obligations under the FMLA.

When the need for leave is not foreseeable, the employee must still comply with the employer's usual and customary notice and procedural requirements for taking leave unless there are unusual circumstances, such as a medical emergency preventing the employee from doing so. Otherwise, failure by the employee to abide by customary policies for requesting leave may result in FMLA leave being delayed or denied.

E. Employer Notice Requirements

1. *Eligibility Notice*

- a. When an employee requests FMLA leave, or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer must notify the employee of the employee's eligibility to take FMLA leave within 5 business days, absent extenuating circumstances. This notice must state whether the employee is eligible for FMLA leave, and if not, at least one reason why the employee is not eligible.
- b. The eligibility notice must be provided to the employee following the first request for FMLA leave in each 12-month leave year and only for subsequent requests for FMLA leave for a different qualifying reason within the same 12-month leave year if the employee's eligibility status has changed from the first notice.
- c. Notice may be verbal or in writing.

2. *Rights and Responsibilities Notice*

- a. Employers must provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of failure to meet these obligations. If the employee's leave has already begun, the notice must be mailed to the employee's address of record.
- b. The notice must include, as appropriate, the following:
 1. That the leave may be designated and counted against the employee's FMLA entitlement;



www.mybrcc.edu

2. Any requirements for the employee to furnish certification and the consequences of failing to do so;
 3. The employer's requirement that the employee use available paid leave balances, and the employee's entitlement to take unpaid FMLA leave if the employee does not meet the conditions for paid leave;
 4. Any requirement for the employee to make any premium payments to maintain health benefits, the arrangements for making such payments and the consequences for failure to make timely payments;
- c. If any of the information in the notice changes, the employer must provide written notice referencing the prior notice and providing the changes to an employee within five (5) business days of receipt of the employee's first notice of need for leave subsequent to any change.

3. *Designation Notice*

- a. When the employer has enough information to determine whether leave is being taken for an FMLA-qualifying reason, the employer must notify the employee of that designation in writing within five (5) business days, absent extenuating circumstances. Requirement of a fitness-for-duty certification for restoration of employment must be included with the designation notice.
- b. The employer must notify the employee of the amount of leave counted against the employee's FMLA entitlement. If the amount of leave needed is known at the time of designation, the employer must notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA entitlement in the designation notice. If it is not possible to provide the exact amount of time that will be counted, then upon request by the employee, the employer must provide written or verbal notice of the amount of leave counted against the employee's FMLA leave entitlement, but no more often than once in a 30-day period and only if leave is taken in that period.
- c. Only one notice of designation is required for each FMLA-qualifying reason per applicable 12-month period.
- d. If the information provided in the notice changes, the employer must provide written notice of the change within five (5) business days of receiving the employee's first notice of need for leave after the change.

F. Certification and Documentation

Employees seeking leave to care for a covered family member with a serious health condition or for their own serious health condition are required to support the request with a certification issued by the health care provider of the family member or the employee, respectively, and subsequent recertification, as appropriate. BRCC may also require a fitness-



www.mybrcc.edu

for-duty certification for restoration to employment when the leave is for the employee's own serious health condition.

BRCC may require that an employee's leave due to a qualifying exigency or to care for a covered servicemember with a serious injury or illness be supported by a certification.

BRCC may not request certification of leave to care for a healthy newborn child, or for placement with the employee of a son or daughter for adoption or foster care, although BRCC may request documentation of the family relationship.

The employee must provide the requested certification to BRCC OHR within 15 calendar days of it being requested. It is the employee's responsibility to furnish a complete and sufficient certification. A certification is considered incomplete if one or more applicable entries have not been completed and/or if the information provided is vague, ambiguous, or non-responsive. BRCC will notify the employee, in writing, of any deficiencies in the certification. The employee must correct the deficiency within seven (7) days or BRCC may deny the taking of FMLA leave.

Where leave for a serious health condition lasts beyond a single leave year, a new medical certification is required in each subsequent FMLA leave year.

G. Authentication, Clarification and Recertification

BRCC OHR may contact the health care provider for purposes of clarification and authentication of the medical certification. However, BRCC OHR may not ask for additional information beyond what is required by the certification form. Under no circumstances may an employee's direct supervisor contact the employee's health care provider.

Authentication means providing the health care provider with a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document. No additional information may be requested.

Clarification means contacting the health care provider to understand the handwriting on the certification form or to understand the meaning of a response. No additional information may be requested.

BRCC may request a recertification for leave taken because of an employee's own serious health condition or the serious health condition of a family member no more frequently than every 30 days and only in connection with an absence by the employee. However, if the minimum duration indicated on the medical certification exceeds 30 days, BRCC must wait the indicated minimum duration before requesting a recertification.

Exception: BRCC may request recertification in less than 30 days if:

1. The employee requests an extension of leave, or
2. Circumstances described in the previous certification have changed significantly, or



www.mybrcc.edu

3. The employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

H. Fitness-for-Duty Certification

An employee that has been on continuous FMLA-qualifying leave for his/her own serious health condition will be required to obtain a fitness-for-duty certification from his/her health care provider as a condition of restoration of employment. The fitness-for-duty form can be obtained from the BRCC OHR. The employee has the same obligation to participate and cooperate as in the medical certification process.

During intermittent or reduced schedule leave, BRCC is only entitled to a certification of fitness to return to duty up to once every 30 days.

I. Employee Failure to Provide Certification

If an employee fails to provide certification in a timely manner for foreseeable leave, BRCC may deny FMLA coverage for the leave until the required certification is provided. In the case of unforeseeable leave, BRCC may deny FMLA coverage for the requested leave if the employee fails to provide a certification within 15 calendar days from receipt of the request for certification unless not practicable due to extenuating circumstances. If the employee fails to timely return the certification, BRCC can deny FMLA protections for the leave following the expiration of the 15-day time period until a sufficient certification is provided.

If an employee fails to provide recertification within 15 calendar days of request, then BRCC may deny continuation of the FMLA leave protections until the employee produces a sufficient recertification. If the employee never produces the recertification, the leave is not FMLA leave.

BRCC may delay employment restoration until an employee submits required fitness-for-duty certification. If the employee never submits the fitness-for-duty certification or a new medical certification, after proper notification by BRCC, the employee may be terminated.

J. Certification for Qualifying Exigency Leave

1. *Active Duty Orders*

The first time an employee requests leave for a qualifying exigency, BRCC may require the employee to provide a copy of the military member's active duty orders or other military documentation which indicates the covered active duty or call to active duty and dates of such service.

BRCC may require that leave for any qualifying exigency be supported by a certification that provides the dates, description and other details of the exigency and the needed leave.

2. *Rest and Recuperation Leave Orders*



www.mybrcc.edu

If the qualifying exigency leave is to spend time with the military member while he or she is on Rest and Recuperation leave, BRCC may request a copy of the member's Rest and Recuperation orders or other documentation issued by the military which states the military member had been granted Rest and Recuperation leave and the dates.

Once an employee submits a complete and sufficient certification, BRCC may not request additional information.

Recertification is not permitted for leave taken for the same qualifying exigency.

K. Certification for Military Caregiver Leave

BRCC may require an employee to obtain a certification from an authorized health care provider when leave is taken to care for a covered servicemember with a serious injury of illness. The certification may be completed by:

1. A Department of Defense (DOD) health care provider,
2. A Department of Veterans Affairs (VA) health care provider,
3. A DOD TRICARE network authorized private health care provider,
4. A DOD non-network TRICARE authorized private health care provider,

BRCC may request the following information for Military Caregiver Leave

1. The name, address, and appropriate contact information of the health care provider, the type of medical practice and the medical specialty,
2. Whether the cover servicemember's injury of illness was incurred in the line of duty while on active duty or, if not, whether the cover servicemember's injury of illness existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty while on active duty,
3. The approximate date on which the serious injury or illness commenced, or was aggravated, and its probable duration,
4. A statement of appropriate medical facts regarding the covered servicemember's health condition, sufficient to support the need for leave.

L. Maintaining Group Health Plan Benefits

BRCC is required to maintain an employee's health benefit coverage under any group health plan for the duration of any FMLA leave period at the level and under the conditions that coverage would have been provided if the employee had remained continuously employed during the entire FMLA leave period.

The taking of FMLA leave cannot result in the loss of any employment benefit accrued prior to the commencement of the leave, except for the use of accrued paid leave to substitute for unpaid FMLA leave.



www.mybrcc.edu

Any share of group health plan premiums paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. If premiums are raised or lowered, the employee is required to pay the new premium rates.

If accrued paid leave is substituted for unpaid FMLA leave, the employee's share of premiums must be paid by the method normally used during any paid leave such as payroll deduction.

An employee who is on unpaid FMLA leave will be required to submit monthly premium payments to BRCC. The terms and conditions of these payments will be provided in writing to the employee.

Valid reasons for ending employee group health plan coverage:

1. The employee fails to return from leave or continues on leave after exhausting his or her FMLA entitlement,
2. BRCC can show that the employment relationship would have terminated if the employee had not taken FMLA leave, such as if the employee would have been laid off and not transferred to a new position, or
3. The employee provides unequivocal notice of intent not to return to work.

Additionally, under certain conditions, BRCC may end group health plan coverage when an employee on FMLA leave fails to submit the required premium payment. In order to drop the coverage for an employee whose premium payment is late, BRCC must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 calendar days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 calendar days after the date of the letter unless the payment is received before then.

M. Employee Reinstatement

An employee must submit the fitness-for-duty certification prior to the anticipated return to work date indicating his/her ability to perform the essential functions of his/her job.

Limitations to employee reinstatement:

1. The employment relationship ended and would have ended even if the employee had been continuously working,
2. A key employee's reinstatement would cause substantial and grievous economic injury to BRCC,
3. The employee is unable to perform an essential function of his or her job because of a physical or mental condition, or
4. The employee fraudulently obtained FMLA leave.

If an employee chooses not to or is unable to return to work after exhausting his or her FMLA leave, all entitlements and rights under the FMLA cease at that time. The employee is no longer entitled to any further job restoration rights under the FMLA and may be terminated.



www.mybrcc.edu

If an employee returning from FMLA leave is unable to perform an essential function of the position, the employee has no right to restoration to another position under the FMLA and the FMLA does not require BRCC to create a position that did not previously exist. However, the employee may have additional rights and privileges under the Americans with Disabilities Act. *See BRCC Policy HR 2-07/Persons with Disabilities: All Employees.*

N. Recordkeeping Requirements

FMLA records will be housed in and maintained by the BRCC Office of Human Resources for a minimum of three (3) years and in accordance with section 11(c) of the FLSA and the FMLA regulations, 29 CFR 825.500.

All FMLA records are confidential and will not be maintained as a part of the employee's official personnel record. Supervisors and managers may be informed of necessary restrictions on work duties and necessary accommodations. First Aid and safety personnel may be informed, as appropriate, if the employee's condition might require emergency treatment. Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

O. Interaction with Federal or State Laws

The ADA's "disability" and the FMLA's "qualifying condition" are different concepts and must be analyzed separately. The leave provisions of the FMLA are wholly distinct from the reasonable accommodation obligations of employers covered under the ADA.

The Pregnancy Discrimination Act (PDA) amended Title VII of the Civil Rights Act of 1964 requires employers to provide the same benefits who are pregnant as to other employees with short-term disabilities. An employee employed for less than 12 months by BRCC (and therefore not an FMLA-eligible employee) may not be denied maternity leave. Title VII does not require employees to be employed for a certain period of time to be protected.

P. Adverse Actions and Enforcement

1. An employer is prohibited from interfering with an employee's right to take leave under the FMLA. Such interference includes refusal to allow an employee to take FMLA leave, discouraging an employee from using FMLA leave, or manipulation by the employer to avoid responsibilities under the FMLA.
2. An employer is prohibited from discharging or in any other way discriminating or retaliating against any person, whether or not an employee, for exercising or attempting to exercise his or her rights under the FMLA.
3. Employer cannot use the taking of leave as a negative factor in employment actions, such as hiring, promotions, or discipline. Leave taken for any FMLA-qualifying reason may not be assessed points or counted against an employee in any manner under employer "no fault" attendance plans.

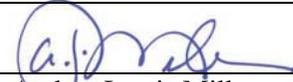


www.mybrcc.edu

4. Any violations of the FMLA or its regulations constitute interfering with the rights provided by the FMLA.
5. Employees cannot waive, or be induced by employers to waive, their future rights under the FMLA.
6. No provision in the FMLA will diminish any protection or greater benefit provided by a collective bargaining agreement (CBA). On the other hand, no provision of the FMLA can be diminished by any provision of a CBA.
7. An employer is prohibited from discharging or in any other way discriminating against any person, whether or not an employee, for opposing or complaining about any unlawful practice under the FMLA.
8. All persons, whether or not an employer, are prohibited from discharging or in any other way discriminating against any person, whether or not an employee, because that person has filed a charge or instituted a proceeding under the FMLA, has given or is about to give information related to a FMLA proceeding or inquiry, or has testified or is about to testify in a FMLA proceeding or inquiry.

Source of Policy: 29 U.S.C. 2601, et seq.
Amended Title I Law
29 CFR Part 825
BRCC Policy #209 Accrual
and Use of Leave
BRCC Policy #201 Equal
Employment Opportunity
BRCC Policy #202 Persons
 Related Policy: with Disabilities

Responsible Administrator: Human Resources

Approved by: 
 Chancellor Andrea Lewis Miller

LCTCS Policy Reference: #6.003
 LCTCS Guideline Reference: Article II, Sect 2
 Date: 1/20/2015