

# Davis Applied Technology College: A Utah College of Applied Technology Campus Family Medical Leave Policy

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## 1. Purpose

To define the Davis Applied Technology College: A Utah College of Applied Technology Campus (College Campus) policy and procedure with regard to family and medical leave. The College Campus recognizes the occasional need for time away from work to participate in early childrearing, one's own serious illness, the care of family members who have serious health conditions, care for a family member injured in military service, or assist a family member called up to military service. This policy is intended to assist employees of the College Campus in better balancing those family needs with work place demands. The College Campus will comply with the Family and Medical Leave Act implementing Regulations as revised effective January 16, 2009. The College Campus posts the mandatory FMLA notices and upon hire provides all new employees with notices required by the U.S. Department of Labor (DOL).

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

## 2. References

2.1. Family and Medical Leave Act (FMLA), 29 USC 2601

2.2. Davis Applied Technology College Sick Leave Policy and Procedure

## 3. Policy

**3.1. General Information.** Under this policy, the College Campus will grant up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered service-member with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

**3.1.1.** When an employee is or anticipates being absent for more than three consecutive days, due to factors related to FMLA criteria defined in this policy, they are expected to notify the HR Director and complete the required documentation. Employees with questions about this FMLA policy including as it relates to the College Campus's sick leave policy should consult with the HR Director.

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

**3.2.1.** The employee must have worked for the College Campus for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. 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 a week or if the employee is on leave during the week.

**3.2.2.** 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.

**3.3. Types of Leave Covered.** To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

**3.3.1.** For incapacity due to pregnancy, prenatal medical care or child birth.

**3.3.2.** To care for the employee's child following birth.

**3.3.3.** The placement of a child for adoption or foster care and to care for the newly placed child.

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

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

**3.3.5.1.** 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.

**3.3.5.2.** 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.

**3.3.5.3.** 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.

**3.3.5.4.** Ordinary and short-term illnesses lasting three days or less are not covered by FMLA, unless they escalate into a serious health condition. If an employee takes paid sick leave for a short-term condition that subsequently progresses into a serious health condition as provided under this policy, the College Campus may designate all or some portion of the related leave taken as FMLA leave, to the extent that the earlier leave meets the necessary qualifications.

**3.3.6. Military Exigency Leave for families of members of the National Guard and Reserves when the covered military member is on active duty or called to active duty in support of a contingency operation.**

**3.3.6.1.** 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.

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

**3.3.7. Military Caregiver Leave (also known as covered service-member leave) to care for an ill or injured service-member.**

**3.3.7.1.** This leave may extend to up to 26 weeks in a single 12-month period for an employee to care for a spouse, son, daughter, parent or next of kin covered service-member with a serious illness or injury incurred in the line of duty on active duty. Next of kin is defined as the closest blood relative of the injured or recovering service-member.

**3.3.8.** For employees not eligible for leave under the FMLA, the College Campus will review business considerations and the individual circumstances involved in light of other leave policies.

**3.4. Amount of Leave.** During any 12-month period, an eligible employee can take up to 12 weeks of leave for the FMLA circumstances defined in 3.3.1. through 3.3.6. above. The College Campus will measure the 12-month period as a rolling 12-month calendar beginning from the date an employee uses any leave under this policy. Each time an employee takes leave, the College Campus will compute the amount of FMLA leave the employee has previously taken in the last 12 months and subtract it from the 12 weeks of available leave. The balance remaining is the amount the employee is entitled to take through the remainder of the 12-month rolling calendar.

**3.4.1.** An eligible employee can take up to 26 weeks for the FMLA circumstance 3.3.7. above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the College Campus will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

**3.4.2.** If a husband and wife both work for the College Campus 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 take a combined total of 12 weeks of leave. If the husband and wife wish to take leave for the care of a spouse or child with a serious health condition, they may each take 12 weeks of leave.

**3.4.2.1.** Only the spouse may receive FMLA leave for prenatal care of a pregnant woman; thus a boyfriend, or fiancé, even if he is the father of the child, is not eligible to take such leave. Following the birth, the father may however, be eligible to take FMLA leave for the care of the child.

**3.4.3.** Additional unprotected leave extending beyond the 12/26 weeks may be granted by approval from the administrative management. This approval will be considered based on individual circumstances such as the amount of additional time needed, the likelihood of the employee returning to their regular duties, and the burden on the College Campus of continuing to keep the position vacant.

**3.5. Employee Status and Benefits During Leave.** While an employee is on leave, the College Campus will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

**3.5.1.** Under current College Campus policy, the employee pays a portion of the health care premium. While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Payroll Department by the 1st day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The employer will provide 15 days' notification prior to the employee's loss of coverage.

**3.5.2.** If the employee purchases voluntary benefit plans such as a life insurance or disability coverage, the employer will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums. If the employee does not continue these payments, the employer may discontinue coverage during the leave. If the employer maintains coverage, the employer may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

**3.5.3.** If the employee is unable or chooses not to return to work following the leave period, the College Campus may require the employee to reimburse the College Campus the amount it paid for the employee's health insurance premium during the leave period. The employee must return and resume their regular duties for at least 30 calendar days in order to be considered "returned to work".

**3.5.4. Other Employment.** An employee who is granted FMLA leave by the College Campus cannot engage in outside employment during the leave period without prior written approval from their cognizant Vice President and the HR Director. Unless the secondary employment is authorized, any employee who works for another employer during an FMLA period may be terminated.

**3.6. Employee Status After Leave.** An employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from the health care provider upon returning to work. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave 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 one which is virtually identical in terms of pay, benefits and working conditions. The College Campus may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

**3.6.1. Seniority and Benefit Accruals.** An employee who takes leave under the FMLA will not lose any seniority or employment benefits that accrued before the date leave began. An employee is not entitled to the accrual of seniority or employment benefits while on leave without pay status.

### **3.7. Use of Paid and Unpaid Leave**

**3.7.1.** An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all paid vacation, personal or sick leave prior to being eligible for unpaid leave. Sick leave may be run concurrently with FMLA leave if the reason for the FMLA leave is covered by the established sick leave policy.

**3.7.2.** Disability leave for the birth of a child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA.

**3.7.3.** An employee who is using military FMLA leave for a qualifying exigency must use all paid vacation and personal leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid vacation, personal leave or sick leave (as long as the reason for the absence is covered by the College Campus sick leave policy) prior to being eligible for unpaid leave.

### **3.8. Intermittent Leave or a Reduced Work Schedule**

**3.8.1.** The employee may take FMLA leave in up to 12 consecutive weeks, or may use the leave intermittently throughout the year, or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hours schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service-member) over a 12-month period.

**3.8.2. Transfer.** The College Campus may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.

**3.8.3. Reasonable Effort.** For the birth, adoption or foster care of a child, the College Campus and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hours schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

**3.8.3.1.** If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the College Campus before taking intermittent leave or working a reduced hours schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

**3.8.4. Light Duty.** In situations where the College Campus is able to offer temporary light duty or modified duty work assignments which the employee is able to perform, the time spent in this will not count as FMLA leave. The employee's right to job restoration to their regular position is held in abeyance during the light duty period.

### **3.9. Certification for the Employee's or Family Member's Serious Health Condition**

**3.9.1.** The College Campus will require medical certification for the employee's or family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical

certification will be provided using the DOL Certification of Health Care Provider for *Employee's* Serious Health Condition form (<http://www.dol.gov/esa/whd/forms/WH-380-E.pdf>), or the DOL Certification of Health Care Provider for *Family Member's* Serious Health Condition form (<http://www.dol.gov/esa/whd/forms/WH-380-F.pdf>).

**3.9.2.** The College Campus may directly contact the employee's or family member's health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. The College Campus will not use the employee's direct supervisor for this contact. Before the College Campus makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the College Campus will obtain the employee's or family member's permission for clarification of individually identifiable health information.

**3.9.3.** The College Campus has the right to ask for a second opinion if it has reason to doubt the certification. The College Campus will pay for the employee or family member to get a certification from a second doctor, which the College Campus will select. The College Campus may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the College Campus will require the opinion of a third doctor. The College Campus and the employee will mutually select the third doctor, and the College Campus will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

### **3.10. Certification of Qualifying Exigency for Military Family Leave**

**3.10.1.** The College Campus will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave form (<http://www.dol.gov/esa/whd/forms/WH-384.pdf>).

### **3.11. Certification for Serious Injury or Illness of Covered Service-member for Military Family Leave**

**3.11.1.** The College Campus will require certification for the serious injury or illness of the covered servicemember. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Servicemember form (<http://www.dol.gov/esa/whd/forms/WH-385.pdf>).

### **3.12. Recertification**

**3.12.1.** The College Campus may normally request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days. However, recertification may be requested in less than 30 days when circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave.

**3.12.2.** For employees requesting intermittent or reduced hours FMLA for periods in excess of six months, the College Campus may request recertification every six months in connection with the employee's absence. The College Campus may provide the employee's health care provider with the employee's attendance records and ask whether the serious health condition and need for leave is consistent with the employee's pattern of absences.

### **3.13. Procedure for Requesting FMLA Leave**

**3.13.1.** All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the HR Director. Within five business days after the employee has provided this notice, the HR Director will complete and provide the employee with the DOL Notice of Eligibility and Rights form. This form will then be completed by the employee and his or her health care provider and returned to the HR Director. (<http://www.dol.gov/esa/whd/fmla/finalrule/WH381.pdf>).

**3.13.2.** When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the College Campus's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

**3.14. Designation of FMLA Leave.** Within five business days after the employee has submitted the appropriate certification form, the HR Director will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice form (<http://www.dol.gov/esa/whd/forms/WH-382.pdf>).

**3.15. Return to Work From FMLA Leave.** On a basis that does not discriminate against employees on FMLA leave, the College Campus may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The failure of an employee to return to work upon the expiration of a leave of absence under the FMLA will subject the employee to immediate termination. Following a FMLA leave, the employee must return to work for a minimum of 30 calendar days in order to be considered "returned". If an employee is unable or chooses not to return to work for at least 30 days, they may be required to repay certain benefits paid to them while on FMLA leave, such as sick pay and the employer portion of insurance premiums.