To: University Employees Covered Under A Collective Bargaining Agreement

From: Elizabeth Robinson, Director of Human Resources

Re: Family Medical Leave Act - February 5, 1993

As an employee of the City University of New York covered by a collective bargaining agreement, you are eligible for leave under the February 5, 1993 Family Medical Leave Act (FMLA). This memorandum will assist you in understanding the University Regulations for requesting, receiving, and returning from a FMLA leave.

Prior to the enactment of the Family Medical Leave Act, CUNY employees already had provisions in their collective bargaining agreements covering several of the leave categories within the newly enacted law e.g. temporary disability and childcare. When approved leaves are granted employees in accordance with University regulations, and are also permissible under FMLA, they shall be concurrently counted toward use of the 12 week FMLA leave entitlement during the University designated FMLA leave year (September 1 – August 31).

Employees are eligible for FMLA leave if they work at a CUNY college for at least 12 months, and for at least 1,250 hours during the year preceding the leave.

The United States Department of Labor has determined that all full-time salaried employees, such as full-time faculty in institutions of higher education who have worked for the employer for at least 12 months are presumed to have met the 1250 hours of service requirement for FMLA eligibility.

Employees of the CUNY Research Foundation or any other separately incorporated employer affiliated with CUNY or a CUNY college are not CUNY employees and are not covered under these guidelines.

Permissible Reasons for Taking FMLA Leave:

1. For the birth of a son or daughter, and to care for the newborn child (*)
2. For placement with the employee of a son or daughter for adoption or foster care (*)
3. To care for the employee’s spouse, domestic partner (**), son (**, #), daughter (**, #), or parent (****, #) with serious health condition, and
   4. Because of a serious health condition that makes the employee unable to perform the essential functions of his/her job. (##)
Notes  *: Leave to care for a newborn child, or for a newly adopted or foster care child, of the employee, must conclude within 12 months of the birth or placement. The first 12 weeks, or cumulative 60 days, of any approved leave granted an employee under reasons 1 and 2 meet the requirements of FMLA leave if the leave occurs within the first 12 months of the birth or placement of a child with the employee, unless the 12 week FMLA entitlement has been previously extended during the FMLA leave year.

**: A domestic partner must be validated under separate University policy for the employee to qualify for FMLA benefits. Children of the domestic partner may also be covered if they qualify under separate University guidelines.

**: Son of daughter is defined as a biological, adopted, or foster child, a stepchild, or a child of a person acting in loco parentis, who is under 18 years of age or older than 18 years of age and incapable of self-care because of a mental or physical disability.

**: An employee is not entitled to FMLA leave to care for a seriously ill parent of a spouse; parent is defined as biological parent or an individual who acts in loco parentis to an employee when the employee was a child.

#: Persons who act in loco parentis include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, the person who had such responsibility for the employee when the employee was a child; a biological or legal relationship is not necessary.

##: The first 12 weeks, or cumulative 60 days, of any University approved leave granted an employee under current temporary disability leave policies for reason #4, (which includes medical leave taken prior to or immediately following the birth of a child), meet the requirement for FMLA leave and are covered under these policies and practices unless the 12 week FMLA entitlement has been previously expended during the FMLA year.

Limitations on Spouses/Domestic Partners Who Are Both Employed at the Same CUNY College

Leave taken by spouses/domestic partners who work for the same CUNY college, is limited to a COMBINED total of 12 weeks within the FMLA leave year (9/1-8/31) when the leave is taken for the birth or placement for adoption or foster care of a child or to care for a parent or parents with a serious health condition. The combined total limitation does not apply to leave taken by either spouse to care for the other who is seriously ill and unable to work, to care for a child with a serious health condition, or for his or her own serious health condition.

The following University Regulations govern the application and use of FMLA approved leave:

1. The College Human Resources Director is the sole campus staff person authorized to review and approve FMLA qualifying leaves and must be notified of all requests for leave. However, this policy does not amend or change the continuance of any and all internal college, Board of Trustee, or contractual notification requirements currently in effect.
2. For the purposes of granting of FMLA qualifying leave, each CUNY college is a separate leave unit. An eligible full-time employee of a college within the City University who has met the FMLA eligibility requirements at one college, and who transfers or moves from one college to another college under approved University policies, without a break in continuous service, shall be eligible to request use of any unused FMLA entitlement for that FMLA leave year at the receiving college.

Furthermore, an eligible full-time employee who is employed and fulfills the 1,250 hours minimum eligibility requirement through combined service at one or more CUNY colleges as a result of transfer or move to a receiving college, without a break in continuous service, who feels that the combined appointments may qualify the individual for leave under FMLA, may petition the University for determination. Additionally, a person who is employed and fulfills the 1,250 hours minimum eligibility requirement through multiple part-time appointments at one or more CUNY Colleges in part-time, hourly titles (adjunct, college assistant, Continuing Education Teacher, etc.) who feels that the combined appointments may qualify the individual for leave under FMLA, may petition the University for determination. The request for review should be made to the College Human Resources Director at a campus where current service is being rendered, it will then be forwarded to the University Human Resources Director for review.

3. The University designated FMLA leave year for determining usage shall be the Academic Year: September 1 through August 31.
4. Approved paid leave must be used prior to unpaid leave.

Both paid and unpaid FMLA leave are counted collectively in determining the maximum twelve (12) week entitlement within the September 1 – August 31 FMLA leave year. The following lists the sequence for usage of approved leave balances.

a. For the serious medical condition of an employee, paid sick leave accruals must be used first, followed by all other available time and leave accruals. Accruals must be charged before unpaid leave may be granted;
b. For the care of a newborn, placement with the employee of a child for adoption or foster care (childcare leaves), or for care necessitated by the serious medical condition of a family member, all available paid time and leave, other than sick leave accruals, must be charged before unpaid leave may be granted.

Any approved leave for illness granted under the University’s temporary disability leave provisions, which extends beyond five days will be counted as part of the employee’s FMLA entitlement, if it qualifies.

The college will assume and therefore count as part of the employee’s FMLA entitlement, unless the employee proves otherwise, that a personal illness, which extends beyond five days is serious because the employee is unable to perform one or more of the essential duties of the position. In summary, authorized absences for personal medical reasons, paid or unpaid, anticipated or unanticipated, which extend for more than 5 days will be entirely counted from the beginning of the absence as FMLA leave.
5. A request for leave must be submitted in writing to the Human Resources Office of your college. Failure to initiate or complete a written request in a timely manner may result in the delay or denial of a leave by the College Human Resources Director.

a. 30 days advance notice is required when the need for the leave is foreseeable. All requests must be submitted in writing on a form authorized by the college.
b. The College Human Resources Director must be notified about unanticipated leave for personal illness when the absence is expected to continue, or has extended, beyond three calendar days.
c. In instances where oral notice is given first, it must be followed up by a written request in a timely manner on a form authorized by the college.
d. If the need for a leave cannot be foreseen i.e. an unanticipated emergency, notice must be given as soon as practicable.

6. Where the FMLA qualifying event relates to a medical condition, medical certification from a health care provider (physician or practitioner) must be submitted to the College Human Resources Director in writing for approval. At present, the University medical certification which must be submitted is the CUNY MEDICAL CERTIFICATION FORM.

Failure to comply in a timely manner, within 15 days upon request of the College Human Resources Director for medical documentation, may result in the leave being delayed or denied. With the exception of unanticipated medical emergencies, the medical certification must be fully completed and approved prior to initiation of leave. Compliance with the request procedures indicated in 5(a) above will assure that sufficient time for the college review required to determine whether the requested leave shall be granted.

a. The Certification must be submitted in writing prior to granting of FMLA leave.
b. Second and third medical opinions, at the college’s expense, may be required.
c. Recertification may be required every thirty days.
d. A fitness for duty certification may be required prior to the employee’s return to work. In instances where the leave has been requested due to a serious medical condition of the employee, medical certification confirming fitness must be submitted and approved prior to return to duty.

For staff serving in titles represented by the Professional Staff Congress, the University may require further medical documentation for staff absent more than thirty days. The college may implement the negotiated contract provision 16.3 (1) which permits the college to require a second or third medical opinion, at the college’s expense, prior to return to work when the temporary disability leave has been for more than 30 days.

a. Failure to comply in a timely manner with medical certification procedures, or submission of an incomplete certification may result in delay or denial of granting of leave, or return to duty.
7. An administrative process for employees will be set up to review denials of FMLA leave.
8. Periodic notice to the College Human Resources Director of the employee’s status or intent to return to work may be required from the employee or the employee’s designee while on leave.
9. Procedures governing Intermittent or Reduced Schedule Leave Usage.
   a. The College will determine on a case-by-case basis whether such requests will be granted for birth, adoption or foster care placement.
   b. The minimum leave increment should be one (1) hour.
   c. An employee taking FMLA leave on an intermittent or reduced schedule may be transferred to an alternate temporary position. The alternative position shall have equivalent pay and benefits. The alternative position does not have to have equivalent duties but will better accommodate the recurring periods of requested leave than does the employee’s regular position.
10. Rights of reinstatement and restoration upon return from FMLA leave. These rights exist only when an employee returns immediately from FMLA leave. They are not guaranteed under any other circumstances.
   a. Upon return from FMLA approved leave, an employee will be reinstated to the same or to an equivalent position as that which the employee held when leave commenced.
   b. Upon return from FMLA approved leave, whether the employee is being restored to the same or to an equivalent position, the employee will be restored with the same benefits on the same terms as prior to taking the leave, unless changes have occurred for all employees during the time the employee was on FMLA leave.
11. Financial recourse when an employee does NOT return from unpaid FMLA leave. In specific instances where the employee does not return from a FMLA leave, the college, and/or the University acting on behalf of the college, will recover costs associated with payment for benefits provided to the employee during the period of the leave.
12. Health benefits, both through the City of New York and Union Welfare funds must remain in place for employees and their dependents while the employee is on an approved leave under the terms of FMLA. For those employees whose period of leave will not include any unpaid leave time, such benefits will continue automatically.