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## 8.7 Medical Leaves of Absence

Saint Mary's College of California

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## 8.7 Medical Leaves of Absence

The absences described below are regulated by Federal and State guidelines, including the Family and Medical Leave Act (FMLA), the California Family Rights Act (CFRA) and the Pregnancy Disability Leave (PDL). *Each type of leave is described, after which common provisions, requirements and definitions are provided.*

### 8.7.1 Family and Medical Leave Act (FMLA)

#### Eligibility

Employees who have completed at least one (1) year of employment with the College and have worked at least 1250 hours in the twelve (12) months (not necessarily consecutive months) preceding the leave are eligible for a maximum of twelve (12) weeks of unpaid leave in a twelve

(12) month period under the following circumstances:

- For reasons of the birth of a child of an employee, the placement of a child with the employee in connection with the adoption or foster care of a child by the employee, or the serious health condition of the employee's child; or
- To care for a parent or a spouse who has a serious medical condition; or
- Because of an employee's own serious health condition which makes the employee unable to perform the functions of his/her position, including leave taken for disability on account of pregnancy, childbirth or related medical conditions.

NOTE: Federal and State of California Family Leave regulations say that unless complications arise, the common cold, the flu, earaches, upset stomachs, minor ulcers, headaches other than migraine, routine dental or orthodontia problems and periodontal disease are not serious health conditions that entitle an employee to family leave.

**Temporary Transfer:** If an employee on a FMLA family/medical leave needs intermittent leave or a reduced work load, the College may temporarily transfer the employee to an alternative position at the transferred employee’s equivalent pay rate and benefits.

### 8.7.2 California Family Rights Act (CFRA)

Provides for twelve (12) weeks of unpaid leave under circumstances similar to FMLA, EXCEPT that it does not provide leave for disabilities related to pregnancy. If an employee takes a leave under FMLA unrelated to pregnancy disability, his/her leave entitlement under CFRA runs concurrently. CFRA may also be used for:

- **Baby Bonding** – This includes birth of a child to an employee, or placement of a child with an employee in connection with the adoption or foster care of the child (see Pregnancy Disability Leave (PDL) and Intermittent Leave, below, for more information on Baby Bonding.)
- **Family care** – This includes care of a child, parent or spouse who has a serious health condition.†
- **Medical leave** – Refers to the employee’s own serious health condition\* that makes the employee either unable to work at all or unable to perform one or more essential functions of the position.

† Definitions can be found in the section below titled “Information, Requirements, Procedures and Definitions Common to Family/Medical Leaves under the Family and Medical Leave Act (FMLA), California Family Rights act (CFRA) and Pregnancy Disability Leave (PDL)”

### 8.7.3 Pregnancy Disability Leave (PDL)

Disabilities due to pregnancy and pregnancy-related conditions are not covered by CFRA but instead are provided for California employees by Pregnancy Disability Leave. Therefore

employees who are disabled due to pregnancy are permitted rights under PDL in addition to CFRA rights. Once the baby is born, CFRA “baby bonding” leave is applicable for the remainder of the time allowed.

### **Allowable Time**

PDL provides for leave up to four (4) months, which is the equivalent of 88 working days/17 weeks and 3 days/704 working hours (full-time, prorated for part-time). Of the four months, 12 weeks (60 days/480 hours runs concurrently with FMLA.

PDL is available only for periods of actual disability. The employee must be designated as disabled because of pregnancy, childbirth or related medical condition by her treating physician; there is a presumed disability of six (6) weeks when giving birth.

CFRA taken after a FMLA/PDL leave is 12 weeks/60 days/480 hours (full-time, prorated if part-time). CFRA may be taken for purposes of bonding with the baby. No medical certification is required.

The employee may take pregnancy leave on an intermittent basis, as needed, in increments of no less than 3 hours. Alternatively, the employee may use pregnancy leave to facilitate a reduced work schedule prescribed by the employee’s health care provider. Only the amount of leave actually taken will be counted toward the four-month entitlement.

PDL is unpaid. However, the employee must use accrued sick leave during her pregnancy disability leave and may choose to use accrued but unused vacation or other paid leave toward the four months leave. The substitution of paid leave does not extend the total leave entitlement.

Vacation or sick leave will not accrue during the unpaid portion of a pregnancy disability leave. Medical benefits will be continued only if the employee is on a concurrent FMLA leave.

### **8.7.4 Information, Requirements, Procedures and Definitions Common to Family / Medical Leaves under the Family and Medical Leave Act (FMLA), California Family Rights Act (CFRA) and Pregnancy Disability Leave (PDL)**

1. ***Return to Same or Comparable Job*** – Eligible employees returning from these unpaid leaves have the right to return to the same or a comparable position.

2. ***Pay During Leaves*** – Employees may elect to use any or all of their accrued unused sick leave or vacation during a family/medical leave, but employees on PDL are required to use their accrued unused sick leave.
3. ***Pay Status and Source*** – The College allows substitution of accrued time off and coordination of benefits received by the State of California in order to extend pay to eligible employees. At no time can an employee receive more than 100% of her or his base salary when coordinating benefits received by the College and other entities (SDI, PFL, Workers’ compensation, etc.)
4. ***Benefits During FMLA/CFRA Leaves*** – Under both FMLA and CFRA, eligible employees will be provided with continuation of health benefits as if the employee were at work, up to 12 weeks for each medical leave taken within a 12-month period. Both paid and unpaid leave periods count toward the maximum twelve (12) week benefit. If otherwise entitled, the employee will continue to accrue leave benefits when paid leave is being substituted for unpaid leave, but will not accrue vacation or sick leave during the unpaid portion of the leave.
5. ***Collection of Unpaid Premiums*** – Employees who would normally have a payroll deduction for medical/dental/vision care coverage will be billed for those coverages for any period without pay. The College reserves the right to recover premiums it paid for maintaining an employee’s health coverage if the employee fails to return to work from the medical leave, or to discontinue benefits coverage if the employee has not paid the premiums and the College has notified the employee in writing two times during a three-month period.

During any unpaid period the employee will be billed on a monthly basis for those deductions normally taken through payroll deduction. If these premiums are not paid on a timely basis the College reserves the right to terminate coverage after the 12 week FMLA period and recover the unpaid premiums through collections process.

6. ***Requesting Family/Medical or PDL*** – Employees must give reasonable, advance notice of the desire or need to take family/medical leave or pregnancy disability leave. Employees must notify Human Resources of the need for leave and Human Resources will then coordinate the leave and ensure accurate designation of the type

of leave. Eligible employees must apply for leave by completing the “Request for Leave” form and in the event of a serious health condition of the employee or immediate family member, the “Certification of Health Care Provider” form for each occurrence.

7. ***Medical Certification of Employee’s Own Serious Health Condition*** –An employee requesting family/medical leave because of the employee’s own serious health condition must provide medical verification from a health care provider which includes: (1) date the condition started; (2) how long it is expected to last; and, (3) a statement that, due to the serious health condition, the employee is unable to perform the functions of his/her position. The College may require that the employee obtain subsequent re-certification regarding the employee’s serious health condition if additional leave is required. At any time the College may require, at its expense, an examination by an independent second health care provider. If the opinion of the second provider differs from that of the employee’s health care provider, the College may require, at its expense, a third opinion. The third opinion is final and binding.
8. ***Medical Certification for Family Leave*** – Employees requesting family/medical leave to care for a child, spouse or parent must provide medical certification of the serious health condition of the individual requiring care. The medical certification must state: (1) date the condition started; (2) how long it is expected to last; (3) how much time the medical care provider estimates the employee will be needed to care for the individual requiring care; and, (4) that the condition requires a family member to provide care. The College may require that the employee obtain subsequent re-certification regarding the serious health condition of the child, spouse or parent if additional leave is required.
9. ***Accounting for Use of Leaves*** – Each of these medical leaves must be separately designated on the employee’s attendance report so Human Resources can track and ensure accurate accounting for the leaves.
10. ***Return from Family/Medical Leave or Pregnancy Leave*** – Upon approval of a leave the College will confirm the expected date of the employee’s return and copy the supervisor. The following apply to returns from family/medical leaves or PDL:

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- Any request for an extension of an approved leave must be submitted in writing to Human Resources at least one (1) week prior to the expiration of the current leave.
- Communication from/to the employee regarding the return date.
- Failure to return on the agreed-upon date will be considered a voluntary resignation.
- A written verification of the employee’s ability to resume normal duties is required from the health care provider prior to the employee’s return from a medical leave. Any modifications or restrictions upon return from leave must be detailed and in writing. The College reserves the right to determine if the modifications or restrictions are reasonable (see ADA).
- Upon return from family/medical leave within the allowable time, the employee will be returned to their previous position, or an equivalent position will be made available to them, unless: (1) the job has ceased to exist because of legitimate business reasons unrelated to the leave; or, (2) reinstatement is being sought by any employee who is exempt and among the highest paid ten percent (10%) of College employees, and reinstatement would cause substantial and grievous economic injury to the College.
- If during the approved leave, the child, parent or spouse being cared for no longer needs care, the employee is expected to return to work immediately.

11. ***Definition of “Serious Medical Condition”*** – A “serious health or medical condition” is an illness, injury, impairment or physical or mental condition that involves either:

- Inpatient care (for example, overnight stay) in a hospital, hospice or residential medical care facility; or
- Continuing treatment by, or under the supervision of, a health care provider.  
Continuing treatment may include:
  - Any period of incapacity of more than three (3) consecutive calendar days, plus subsequent treatment;

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- A period of incapacity of more than three consecutive calendar days, plus a subsequent period of incapacity relating to the same condition involving treatment two (2) or more times by a health care provider; and/or may include a regimen of continuing treatment including prescription medication or therapy.
- Disability related to pregnancy (but only for FMLA leave that runs concurrently with PDL);
- Incapacity due to a chronic serious health condition or a permanent or long-term condition for which treatment may not be effective.
- Absences to receive multiple treatments by a health care provider, including recovery from the treatments, such as chemotherapy, radiation, physical therapy for severe arthritis, restorative surgery after an accident and kidney dialysis.

12. ***Intermittent leave*** – May be taken only under the following circumstances:

- In three (3) hour increments and designated on the appropriate attendance report.
- Baby bonding leave must be a minimum duration of two (2) weeks and must conclude within one year of the birth of the child or one year from the date the child was placed in the employee’s home for adoption or foster care.

13. ***Americans with Disabilities Act (ADA)*** – The ADA is a civil rights law that prohibits, under certain circumstances, discrimination based on disability. Disability is defined by the ADA as “a physical or mental impairment that substantially limits a major life activity.” The determination of whether any particular condition is considered a disability is made on a case by case basis.

Saint Mary’s College is committed to providing reasonable accommodations for qualified individuals with disabilities in a fair and equitable manner, and in accordance with applicable federal and state law.

The Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act, require the College to provide appropriate employment accommodations to employees



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with disabilities unless doing so would create an undue hardship, compromise the health and safety of members of the College community, or fundamentally alter the nature of the College’s employment or mission. As described more fully below, the College engages in an interactive process with the employee to determine disability status and accommodation needs.

When seeking a reasonable accommodation, employees are encouraged to inform their supervisor of the need for an accommodation. Upon receiving an accommodation request, supervisors should engage the employee in an interactive dialogue to clarify the type of accommodation(s) being sought. Before any accommodations are made, managers should contact Human Resources for assistance in determining, among other things:

- whether the employee qualifies as an individual with a disability,
- the essential functions of the employee’s job,
- whether the accommodation(s) being sought is “reasonable” and/or to identify alternative accommodation(s).

As part of the interactive process, HR may ask the employee to provide medical and other documentation to support his/her request for reasonable accommodation. All medical documents will be handled confidentially. After submission of all required documentation, HR will confer with the employee and the employee’s supervisor to discuss the requested accommodation(s), and if necessary, possible alternatives.