

## ARTICLE 28

### **FAMILY AND MEDICAL LEAVE AND PREGNANCY DISABILITY LEAVE**

- 28.1 The family and medical leave provisions in this Article incorporate both the Federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) and will be denoted by FML.

#### Eligibility

- 28.2 An employee who has at least twelve (12) months of service is entitled to a family and medical leave without pay.
- 28.3 An eligible employee who is the spouse, registered domestic partner, son, daughter, parent or "next of kin" of an injured, covered service member is eligible for Service Member Care Leave, pursuant to the Fiscal Year 2010 National Defense Authorization Act and related laws.
- 28.4 An eligible employee with family members in the regular Armed Forces or National Guard or Reserves is entitled to Military Exigency Leave, pursuant to the Fiscal Year 2010 National Defense Authorization Act and related laws.

#### Entitlement

- 28.5 Eligible employees are entitled to up to twelve (12) weeks of leave for an FMLA qualifying event within a twelve (12) month period.
- 28.6 Employees eligible for a Service Member Care Leave are eligible for twenty-six (26) workweeks of leave, which includes Service Member Care Leave and the twelve (12) weeks of leave for any other FMLA qualifying event within a twelve (12) month period.

#### FML Entitlement

- 28.7 Eligible employees shall be granted up to a total twelve (12) weeks of family and medical leave (FML) in a 12-month period for the birth of a child of the employee; the placement of a child with an employee in connection with the adoption or foster care of the child by the employee; to care for a child, parent, spouse or registered domestic partner, of the employee who has a serious health condition; or for the employee's own serious health condition.
- 28.8 Military Exigency Leave is FML for the purpose of addressing issues which may arise from a covered military member's deployments or call to active duty to a foreign country. Length of time off from work varies under Military Exigency Leave based on type of leave taken and shall be deducted from the twelve (12) week entitlement.

#### Time Taken on FML

- 28.9 FML is unpaid leave; however, employees shall utilize appropriate leave credits prior to being placed on any unpaid portion of FML.
- 28.10 If an employee asks to use vacation or other paid time off without reference to a FML-qualifying purpose, the CSU may not ask the employee if the leave is for a FML-qualifying purpose.
- 28.11 If the employer denies the employee's request to use vacation or other paid time off and the employee then provides information that the requested time off is or may be for a FML-qualifying purpose, the employer may inquire further into the reasons for the absence. If the absence is FML-qualifying, employees shall utilize appropriate leave credits in accordance with this Article.
- 28.12 When FML is granted for an employee's own serious health condition, an employee shall use applicable leave credits, including sick leave, vacation, compensatory time off (CTO) and Personal Holiday before going on any unpaid portion of FML. However, if the leave is due to the employee's own serious health condition and also qualifies as an Industrial Disability Leave (IDL), Temporary Disability, or Non-Industrial Disability Leave (NDI), the appropriate guidelines shall apply.
- 28.13 FML taken by an employee to care for an eligible family member shall be leave without pay except that an employee must utilize all accrued vacation, personal holiday, compensatory time off (CTO) that he/she is eligible to take prior to any unpaid period of FML.
- 28.14 An employee may use accrued sick leave during the period of FML to care for an eligible family member upon mutual agreement between the employee and the appropriate administrator. Such requests for sick leave shall be made in accordance with Article 15 of this Agreement.
- 28.15 For FML taken for reason of the birth of a child or adoption/foster care of a child by an employee, shall be initiated within one (1) year of the birth of a child or placement of a child with the employee in the case of adoption/foster care.
- 28.16 The period of FML granted to an employee for the birth of a child shall run concurrently with the period of leave available to an employee under Education Code 89519.
- 28.17 FML is separate and distinct from the right of a female employee to take a pregnancy disability leave under Government Code Section 12945. If a female employee takes part or all of the maximum four (4) months of pregnancy disability leave, she may also request up to twelve (12) weeks of FML for reason of the birth of the child, or to care for the new child, or due to her own or child's serious medical condition. FML and pregnancy disability leave shall run concurrently with the period of leave available under the provisions of Education Code Section 89519. FML shall not run concurrently with pregnancy disability leave under Government Code Section 12945.

- 28.18 The amount of family care and medical leave that may otherwise be granted under Article 16 may be reduced by the amount of FML granted to an employee for reasons set forth in this Article.

#### Request and Approval

- 28.19 When the appropriate administrator becomes aware that an employee has taken or intends to take time off for an FML qualifying reason pursuant to provision 28.7, the employee may be asked to provide documentation from a medical professional asserting that there is an FML qualifying reason. FML qualifying leaves may be designated as FML.
- 28.20 An employee shall provide the President with written notice of the need for FML as soon as the event necessitating the leave becomes known to the employee. In general, as much advance notice as is reasonably possible shall be provided and normally shall not be less than five (5) working days of the event giving rise to the need for leave.
- 28.21 If the employee's need for family and medical leave is foreseeable due to the employee's planned medical treatment or planned supervision of a child, parent, spouse, or domestic partner with a serious health condition, the employee shall provide the President with not less than fourteen (14) days notice of the need for the leave. The employee shall consult with the appropriate administrator regarding the scheduling of the treatment or supervision so as to minimize disruption of the operations of the campus.
- 28.22 Before granting FML for the serious health condition of a child, parent, spouse, or domestic partner, the President may require certification of the serious health condition from the health care provider.
- 28.23 Upon expiration of the period which the health care provider originally estimated that the employee needed to care for the child, parent, spouse, or domestic partner, the President may require the employee to obtain recertification if additional leave is requested.

#### Return to Work

- 28.24 Approved FML assures the employee a right to return to his/her former position or an equivalent position upon expiration of the family and medical leave. If the former position and any equivalent position have ceased to exist due to legitimate business reasons unrelated to the leave, the campus shall make reasonable accommodation by alternative means that will not cause undue hardship to the campus. Such alternative means shall include, but not be limited to, offering the employee any other position which is available and for which the employee is qualified. FML shall not constitute a break in service for the purposes of length of service and/or seniority under this Agreement.
- 28.25 An employee on FML shall retain employee status and shall continue to accrue seniority points pursuant to Article 24 of this Agreement during the period of the FML. During FML, an employee may continue to participate in benefits to the

same extent and under the same conditions as would apply to any other personal leave of absence without pay pursuant to this Agreement, except that if any paid portion of the FML is less than twelve (12) weeks, unless canceled by the employee, the CSU shall continue to make employer contributions toward health, dental and vision coverage for the unpaid remainder of the twelve (12) week period. If an employee fails to return at the end of FML, the CSU may require repayment of insurance premiums paid during the unpaid portion of the leave. The CSU shall not require repayment of premiums if the employee's failure to return is due to his/her serious health condition or due to circumstances beyond the employee's control.

- 28.26      The granting or denial of FML provided in this Article shall be subject to Article 8, Complaint Procedure.