

The following information in question and answer form about leave rights and responsibilities under state and federal law appears in *The Simmons College Guide to The Family Medical Leave Act, The Massachusetts Maternity Leave Act & The Small Necessities Leave Act* © Simmons College 2003. If you would like a copy of this guide to leave laws, please visit the Human Resources Office or call extension 2084.

### **WHAT IS THE FAMILY MEDICAL AND LEAVE ACT?**

The Family Medical Leave Act (FMLA) is a federal law designed to help employees balance their work and family responsibilities by allowing them to take reasonable leave for certain family and medical reasons. The Act provides eligible employees, with proper medical certification, up to twelve weeks of leave during any 12-month period for one or more of the following reasons:

- For the birth and care of a newborn child of the employee;
- For placement with the employee of a son or daughter for adoption or foster care;
- To care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- To take medical leave when the employee is unable to work because of a serious health condition.

The Act provides that employers shall maintain group health care insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken. However, an employee on leave continues to be responsible for his or her share of insurance premiums during the period of leave.

Upon an employee's return from FMLA leave, the employee must be restored to his or her original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

#### **Why is the Family and Medical Leave Act important to me?**

The FMLA provides eligible employees with up to 12 weeks of **job-protected (but unpaid) leave** during any 12-month period for one or more of the following reasons:

- for the birth and care of your newborn child;
- for placement of a son or daughter for adoption or foster care in your home;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition; **or**
- to take medical leave when you are unable to work because of a serious health condition.

Leave for birth and care, or placement for adoption or foster care must conclude within 12 months of the birth of the child or the placement of the child in your home.

## **Who is eligible to take FMLA leave?**

You are eligible for FMLA leave if you have worked for Simmons College for at least 12 months, and have worked for at least 1,250 hours over the previous 12 months.

### **Do the 12 months of service with the employer have to be continuous or consecutive?**

No. The 12 months do not have to be continuous or consecutive; all time worked for the employer is counted.

### **How do I determine if I have worked 1,250 hours in a 12-month period?**

As a rule of thumb, the following may be helpful for estimating whether this test for eligibility has been met:

- 24 hours worked in each of the 52 weeks of the year; or
- over 104 hours worked in each of the 12 months of the year; or
- 40 hours worked per week for more than 31 weeks (over seven months) of the year.

## **How does this work for faculty at Simmons?**

A Simmons faculty member is eligible for FMLA leave if he/she has been employed by the College for at least 12 months and has averaged at least a two-thirds workload (including administrative duties, if any) during the 12 months before the leave.

### **Does the law guarantee paid time off?**

No. The FMLA only requires unpaid leave. However, if you have unused accrued paid leave such as vacation or sick days you will be required to use your accumulated leave to pay for some or all of your FMLA leave consistent with Simmons policies. Also, if you need leave because of your own serious health condition and your condition qualifies as a short-term disability, some of your leave may be paid leave.

## **How can FMLA leave be taken?**

FMLA leave can be taken all at once, or on an intermittent basis, or by reducing the number of hours worked during the period it is medically necessary to do so.

- If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent leave is subject to the College's approval.
- FMLA leave may be taken intermittently whenever **medically necessary** to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their Deans and/or Vice Presidents to schedule the leave so as not to unduly disrupt the College's operations. Simmons reserves the right to transfer you to an alternative job with equivalent pay and benefits that accommodates recurring periods of leave.

## **Does Simmons have any special leave provisions for faculty members with teaching duties?**

Yes. Faculty should refer to the Faculty Policy Manual for information about leave options for faculty.

### **What constitutes a “serious health condition” under the FMLA?**

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- a period of incapacity requiring absence of more than **three calendar days** from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
- any period of incapacity due to pregnancy, or for prenatal care; or
- any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
- a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or,
- any absences to receive multiple treatments (including any period of recovery there from) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

### **Do I need to provide medical certification?**

Yes. If you request FMLA leave for your own serious health condition or to take care of an immediate family member with serious health condition, you will need to provide medical certification by a health care provider within **15 calendar days** of requesting the leave.

Simmons College may, at its own expense, require you to obtain a second medical certification from a health care provider. Simmons would choose the health care provider for the second opinion. If the opinions of your health care provider and Simmons's designated health care provider differ, Simmons may require you to obtain certification from a third health care provider agreed upon by you and Simmons. This third opinion shall be paid for by Simmons and shall be final and binding.

### **What happens to my health benefits while I am on unpaid leave?**

The law requires Simmons to maintain your group health insurance coverage if such insurance was provided before the leave was taken and on the same terms as if you have continued to work. You need to contact the College's Benefits Department to make arrangement to pay your share of health insurance premiums while on your unpaid leave.

Note: If you fail to return to work from your FMLA leave, Simmons may seek to recover the amounts paid on your behalf during your leave.

### **How much notice do I have to give when requesting leave?**

When the leave is foreseeable (for pregnancy leave, adoption, or elective surgery), you must provide at least 30-day advance notice of the need to take FMLA leave. You will also be required to provide:

- Medical certification supporting the need for leave due to a serious health condition affecting your or your immediate family member;
- Second or third medical opinions (at the College's expense) and periodic recertification; and
- Periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When intermittent leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the College's operation.

### **Can Simmons count time on maternity leave or pregnancy disability as FMLA leave?**

Yes. Pregnancy disability leave or maternity leave for the birth of a child would be considered qualifying FMLA leave for a serious health condition and may be counted towards your 12 weeks of leave.

### **Can Simmons count time if I am out on worker's compensation as FMLA leave?**

Yes. Leave for a work-related injury would be considered a qualifying FMLA leave for a serious health condition and may be counted in the 12 weeks of leave.

### **Can Simmons count time if I am out on short-term disability leave as FMLA leave?**

Yes. If you need leave for your own serious health condition, and you qualify for short-term disability benefits, your disability leave for would be considered a qualifying FMLA leave for a serious health condition and may be counted in the 12 weeks of leave.

### **Who is considered an immediate "family member" for FMLA leave?**

Your spouse, children (son or daughter), and parents are immediate family members for purposes of FMLA. The term "parent" does not include a grandparent, a sister or brother or a parent "in-law." The terms son or daughter do include stepchildren but do not include children age 18 or over unless they are "incapable of self-care" because of mental or physical disability that limits one or more of the "major life activities."

### **May I take FMLA leave for visits to a therapist, if my doctor prescribes the therapy?**

Yes. FMLA permits you to take leave to receive "continuing treatment by a health care provider," which can include recurring absences for therapy treatments such as those ordered by a doctor for physical therapy.

**May I use my accrued sick days when taking FMLA leave to care for a seriously ill spouse, child or parent?**

Federal law does not mandate that employees be allowed to use sick days for absences not related to their own illness or serious health condition. However, Simmons employees may use up to five of their accumulated sick days to care for a family member with a serious health condition.

**Can Simmons make inquiries about my leave during my absence?**

Yes. Simmons may ask you questions to confirm whether the leave needed or being taken qualifies for FMLA purposes. Simmons may require periodic reports from you on your intent to return to work. Also, if Simmons wishes to obtain a second opinion, you may be required to obtain additional medical certification at the College's expense. Simmons may also have a health care provider contact your health care provider, with your permission, to clarify or confirm information in any completed medical certification form you provide to Simmons.

**Under what circumstances can Simmons refuse to reinstate me to my job?**

If you have exhausted your 12 weeks of FMLA leave within a 12-month period and cannot return to work, you no longer have job restoration rights. If you return to work after 12 weeks but before 26 weeks have passed, Simmons will endeavor to identify other available positions for you at Simmons for which you may be qualified.

**Can Simmons require me to provide a note from my health care provider that I am well enough to return to work?**

Yes. You may be required to furnish a "fitness for duty" certification at the conclusion of your FMLA when that leave is for your own serious health conditions. Simmons may deny reinstatement to you if you fail to provide the certification, or may delay your reinstatement until the certification is submitted.

**If one or more holidays occurs during my FMLA leave, is my leave extended by that number of holidays?**

No. For purposes for determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect.

**Does this same rule apply if the College is closed during the week between Christmas and New Year's?**

No. If the College's business activity ceases for one or more weeks, the days that the College is not open for business do not count against your leave entitlement.

**May Simmons designate leave as FMLA *after* the leave has started or has been completed?**

Yes. Leave may be designated as FMLA leave after the leave has started or after the leave has been completed:

- If Simmons is awaiting receipt of the medical certification to confirm the need for leave.
- If Simmons was unaware that leave was for an FMLA reason, and subsequently acquires information from you or another that places it on notice that the absence qualified as FMLA leave.
- If Simmons was unaware that the leave was for an FMLA reason, and you notify Simmons within two days after return to work that the leave was FMLA leave.

**Who is considered a "health care provider"?**

- Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; **or**
- Podiatrists, dentists, clinical psychologists, optometrists and chiropractors authorized to practice, and performing within the scope of their practice, under state law; **or**
- Nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law; **or**
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; **or**
- Any health care provider recognized by the employer or the College's group health plan benefits manager.

**What are my responsibilities when requesting FMLA leave?**

1. Provide Simmons with notice of the need for leave. If leave is foreseeable, you need to give at least 30 days notice. If leave is unforeseeable, you need to give notice as soon as practicable.
2. Comply with the College's rules for requesting leave.
3. Advise Simmons if leave is to be taken all at once, on an intermittent basis, or on a reduced work schedule basis.
4. Provide medical certification for leave taken as a result of a serious health condition. Forms may be obtained from the College's Human Resources Department.

5. Comply with arrangements to make your group health benefit co-payments.
6. Periodically advise Simmons (either your supervisor or the HR Department) of your intent to return to work at the conclusion of leave.
7. Notify Simmons of any change in the circumstances for which leave is being taken.
8. Provide Simmons with a fitness for duty certification when leave was taken for your own serious health condition.