

Family and Medical Leave (FML)

As a full-time employee of LaGuardia Community College of The City University of New York, you may be eligible for leave under the Family and Medical Leave Act (FMLA). The following is a summary of the FMLA to assist you in understanding CUNY Regulations for requesting, receiving, and returning from a Family and Medical Leave (FML).

Prior to the enactment of FMLA, CUNY employees already had provisions in their collective bargaining agreements covering several of the leave categories within the law, e.g., temporary disability and child care leave. When employees are granted approved leaves in accordance with University regulations, and these leaves are also permissible under the FMLA, the leave shall be **concurrent**. The leave will be counted toward use of the 12 week FML entitlement during the University designated FML leave year, which is **September 1 - August 31**.

Employees are **eligible** for **FML** if the employee worked at a CUNY college for at least twelve (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 (i.e., full-time faculty, non-teaching instructional staff, full-time classified staff) in institutions of higher education who have worked for the employer for at least 12 months are presumed to have met the 1,250 hours of service requirement for **FML** eligibility.

The Family and Medical Leave Act allows for up to twelve (12) weeks leave, full or partial, paid or unpaid for care of your new born or newly adopted or foster care child, care for children under eighteen (18) years of age and/or spouse, domestic partner or parent with a serious health condition. The FMLA also allows for leave for the employee because of a serious health condition that makes the employee unable to perform the essential functions of his/her job. A personal illness beyond five (5) days is considered serious and will be counted as Family and Medical Leave.

Please review the LaGuardia Community College FML policy and procedure including the CUNY FML guidelines, sample FML Application and Medical Certification forms. If you have any questions concerning this policy, eligibility or procedure, please feel free to call the Human Resources Department at extension 5075.

CUNY FML GUIDELINES

Permissible Reasons for Taking FML Leave:

1. For birth of a son or daughter, and to care for the new born 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 a 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 the newborn child, or for the 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 FML 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 FML entitlement has been previously expended during the FML leave year.

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

***: Son or 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 FML 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 has 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 FML leave and are covered under these policies and practices unless the 12 week FMLA entitlement has been previously expended during the FML leave 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 FML 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 for and use of FML leave:

1. **The College Personnel Director is the sole campus staff person authorized to review and approve FML 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 FML 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** FML entitlement for that FML 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 Personnel Director at a campus where current service is being rendered; it will then be forwarded to the University Personnel for review.

3. **The University designated FML leave year for determining usage shall be the Academic Year: September 1 through August 31.** During the first year of implementation, the 12-week entitlement shall run from February 5, 1994 through August 31, 1994.
4. **Approved paid leave must be used prior to unpaid leave.** Both paid and unpaid **FML** leave are counted collectively in determining the maximum twelve (12) week entitlement within the September 1 - August 31 **FML** 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; and
 - b. For the care of a newborn, placement with the employee of a child for adoption or foster care (child care leaves), or for care necessitated by the serious medical condition of a family member, all available **paid time and leave** accruals, **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 FML entitlement, if it qualifies.

The college will assume and therefore count as part of the employee's FML 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 FML leave.

5. **A request for leave must be submitted in writing to the Human Resources/Personnel 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 Personnel Director.
 - a. **30 days advance notice** is required when the **need for the leave is foreseeable.** All requests not submitted, in a timely manner, may result in the delay or denial of a leave by the College Personnel Director.
 - b. The College Personnel 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 medical condition, **medical certification** from a health care provider (physician or practitioner) **must be submitted to the College Personnel 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 Personnel 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 ensure a sufficient amount of time for the college to review and 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 the return to work, when the temporary disability leave has been for more than 30 days.

- e. 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 Personnel 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 shall be one (1) hour.
 - c. An employee taking FML leave on an intermittent or reduced schedule may be transferred to an alternative 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 FML leave.** These rights exist only when employee returns **immediately** from FML leave. They are not guaranteed under any other circumstances.
 - a. Upon return from FML 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 FML 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 FML leave.
11. **Financial Recourse when an employee does not return from unpaid FML leave.** In specific instances where the employee does not return from a FML 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 the FMLA. For those employees whose period of leave will not include any unpaid leave time, such benefits will continue automatically.

If, however, an employee's approved FML leave consists of any unpaid leave, the College Personnel Office will enact procedures to ensure that health benefits will not be interrupted. Procedures to cover these contingencies have yet to be promulgated by the University and must be done in conjunction with various City, State, and Union offices.

Specific procedures will be provided as soon as they are available. In the interim, should an employee be placed on an FML leave without pay, the employee's health care provider (health plan) will be contacted directly by the College Personnel Office to prevent their termination from coverage.

THE CITY UNIVERSITY OF NEW YORK COLLEGE
CONFIDENTIAL APPLICATION FOR LEAVE
Family Medical Leave Act of 1993

Covered employees are eligible for Family Medical Leave if they have worked for the college for a total of 12 months AND for at least 1,250 hours during the year preceding the effective date of the leave. The leave year for determining usage of the 12 week entitlement shall be the Academic Year: September 1 through August 31.

Permissible Reasons For Taking FML Leave:

1. For 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 a 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.

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 FML entitlement, if it qualifies. Authorized absences for medical reasons, paid or unpaid, anticipated or unanticipated, which extend for more than FIVE days will be counted as FML leave from the beginning of the absence. A notification of such absences must be made to the College Personnel Director. However, such notification, whether oral or written, does not amend or change the continuance of any and all internal college, Board of Trustees, CUNY Rules and Regulations, or contractual notification requirements currently in effect.

For anticipated absences, a written request to cover such absences must be submitted to the college personnel director at least thirty days before leave is to begin. However, such written application does not amend or change the continuance of any and all internal college, Board of Trustees, CUNY Rules and Regulations, or contractual notification requirements currently in effect. For unanticipated absences, the College Personnel Director must be notified when the absence is expected to continue, or has extended beyond three calendar days.

In instances where oral notification is given first, it must be followed up by a written request. Failure to comply or submission of an incomplete request in a timely manner may result in the leave being delayed or denied.

Prior to granting the employee authorization to use leave accruals for a possible FML qualifying event, the College Personnel Director must review and approve all documentation in support of leave request to determine: (1) if your request is for a qualifying event, (2) if all required documentation has been submitted and approved, (3) if your usage of the Family Medical Leave allocation during the current University defined leave year permits this leave time, and (4) if your leave dependant on permissible accrual usage, will be taken with or without pay. Upon approval of leave by College Personnel Director, paid leave accruals must be used prior to granting of unpaid leave. Both paid and unpaid FML leave are counted collectively as part of the maximum twelve (12) week entitlement within the September 1 - August 31 FML leave year.

**THE CITY UNIVERSITY OF NEW YORK
CONFIDENTIAL APPLICATION FOR LEAVE
Family Medical Leave Act of 1993**

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 FML entitlement, if it qualifies. Authorized absences for medical reasons, paid or unpaid, anticipated or unanticipated, which extend for more than FIVE days will be counted as FML leave from the beginning of the absence. A notification of such absences must be made to the College Personnel Director. (See reverse side of this form for synopsis of policies and practices governing leave.)

ORAL NOTICE MAY PRECEDE WRITTEN NOTICE

FOR UNANTICIPATED ABSENCE notice must be given when the absence is expected to continue, or has extended beyond three calendar days;

FOR ANTICIPATED ABSENCES, this application should be submitted at least thirty days before leave is to begin. The College Personnel Director may request the submission of medical certification. If required to submit medical certification, it must be presented within fifteen days of request. Failure to comply in a timely manner may result in the leave being delayed or denied.

To be Completed By Applicant:

Date: _____

Name _____

Title/Rank _____

Department _____

Phone number _____

I hereby apply for leave under the FML Act of 1993 for the period:

Dates: From: _____

To: _____

Signature of Applicant _____

Date: _____

Indicate Permissible Reason for taking the leave (from categories on reverse side of form): Reason Number _____

If leave is for other than your own medical illness, indicate:

Name of family member _____ Relationship _____

Identify documents on file which establish relationship, or attach documentation establishing relationship (do not attach originals)

Explanation of reason for which leave is requested _____

For anticipated leave you will be required, where necessary, to submit medical certification within fifteen days from a health care provider on the University form.

I understand that:

Recertification of Medical Documentation may be required. A fitness for duty certification will be required prior to return to work where the FML leave is a result of the employee's health condition. I may be reinstated to the same or a similar position if I fail to return to work immediately upon conclusion of the FML leave, I shall be treated as having voluntarily terminated my employment. If, under current University leave policies, I am eligible to lengthen this leave, I will submit the appropriate documents prior to the conclusion of my FML leave. The University will recover any employee premiums or payments made for the employee by the University while employee is on unpaid leave.

Signature of Applicant _____

Date _____

Reviewed by Benefits Office _____

Approved by _____

College Personnel Director

Date

THE CITY UNIVERSITY OF NEW YORK

Certification of Physician or Practitioner (Optical Form WH-380)

Certification of Health Care Provider
(Family and Medical Leave Act of 1993)

1. Employee's Name: _____
2. Patient's Name (if different from employee): _____
3. The attached sheet describes what is meant by a "serious health condition" under the Family and Medical Leave Act. Does the patient's condition¹ qualify under any of the categories described? If so, please check the applicable category.

(1) ___ (2) ___ (3) ___ (4) ___ (5) ___ (6) ___, or None of the above _____
4. Describe the **medical facts**, which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:
5.
 - a. State the approximate **date** the condition commenced, and the probable **duration** of the condition (and also the probable **duration** of the patient's present incapacity² if different):
 - b. Will it be necessary for the employee to take work only **intermittently or to work on a less than full schedule** as a result of the condition (including for treatment described in Item 6 below)? _____

If yes, give the probable duration:
 - c. If the condition is a **chronic condition** (condition #4) or **pregnancy**, state whether the patient is presently incapacitated² and the like duration and frequency of **episodes of incapacity**².
6.
 - a. If additional **treatments** will be required for the condition, provide an estimate of the probable number of such treatments.

If the patient will be absent from work or other daily **activities** because of **treatment** on an **intermittent or part-time** basis, also provide an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

- b. If any of these treatments will be provided by **another provider of health services** (e.g., physical therapist), please state the nature of the treatments:

¹Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FML leave.

²"Incapacity," for purpose of FML, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from.

- c. If a **regimen of continuing treatment** by the patient is required under your supervision, provide a general description of such regiment (e.g., prescription drugs, physical therapy requiring special equipment):
7. a. If medical leave is required for the employee's **absence from work** because of the **employee's own condition** (including absences due to pregnancy or a chronic condition), is the **employee unable to perform** work of any kind? _____
- b. If able to perform some work, is the employee **unable to perform any one or more of the essential functions of the employee's job** (the employee or the employer should supply you with information about the essential job functions)? _____. If yes, please list the essential functions the employee is unable to perform:
- c. If neither a. nor b. applies, is it necessary for the employee to be **absent from work for treatment**?
8. a. If leave is required to **care for a family member** of the employee with a serious health condition, **does patient require assistance** for basic medical or personal needs or safety, or for transportation? ____.
- b. If no, would the employee's presence to provide **psychological comfort** be beneficial to the patient or assist in the patient's recovery? _____
- c. If the patient will need care only **intermittently** or on a part-time basis, please indicate the probable duration of this need:

(Signature of Health Care Provider)

(Type of Practice)

(Address)

(Telephone number)

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to less than a full schedule:

(Employee signature)

(Date)

THE CITY UNIVERSITY OF NEW YORK

A “**Serious Health Condition**” means an illness, injury, impairment, or physical or medical condition that involves one of the following:

1. **Hospital Care**

Inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity² or subsequent treatment in connection with or consequent to such inpatient care.

2. **Absence Plus Treatment**

(a) A period of incapacity² of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity² relating to the same condition), that also involves:

(1) **Treatment³ two or more times** by a health care provider, by a nurse or physician’s assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health

care provider; or

(2) **Treatment** by a health care provider on **at least one occasion** which results in a **regimen of continuing treatment⁴** under the supervision of the health care provider.

3. **Pregnancy**

Any period of incapacity due to pregnancy, or for prenatal care.

4. **Chronic Conditions Requiring Treatments**

A **chronic condition** which:

(1) Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician’s assistant under direct supervision of a health care provider;

(2) Continues over an **extended period of time** (including recurring episodes of a single underlying condition); and

(3) May cause **episodic** rather than a continuing period of incapacity² (e.g., asthma, diabetes, epilepsy, etc.)

5. **Permanent/Long-term Conditions Requiring Supervision**

A period of incapacity² which is **permanent** or **long-term** due to a condition for which treatment may not be effective. The employee or family member must be **under the continuing supervision of, but need not be receiving active treatment by, a health care provider**. Example include Alzheimer’s, a severe stroke, or the terminal stages of a disease.

²“Incapacity,” for purpose of FML, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from.

³Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

⁴A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to health care provider.

6. **Multiple Treatments (Non-Chronic Conditions)**

Any period of absence to receive **multiple treatments** (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider either for restorative surgery after an accident or other injury, or for a condition that **would likely result in a period of incapacity² of more than three consecutive calendar days in the absence of medical intervention or treatment**, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), kidney disease (dialysis).

²"Incapacity," for purpose of FML, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from.