

### **2.14.2.2 KCTCS Family and Medical Leave Policy**

KCTCS provides eligible employees with unpaid, job-protected leave for certain conditions in accordance with the Family and Medical Leave Act of 1993 (as amended in 2008). To request Family and Medical Leave (FML), please notify your supervisor or local Human Resources Director. System Office employees may notify the supervisor or Employee Relations to request Family and Medical Leave.

#### **I. Eligibility**

All employees who have worked for KCTCS for a minimum of 12 months within the last seven years *and* have worked for KCTCS at least 1,250 hours during the 12 calendar months immediately preceding the request for FML may request FML for a serious health condition involving the employee or a qualified family member for the reasons listed below:

1. To care for the employee's son or daughter (during the first 12 months) following birth of the employee's child;
2. To care for a child (during the first 12 months) following a placement of a child with the employee for adoption or foster care;
3. To provide care for a spouse, son, daughter, or parent ("covered relation") with a serious health condition;
4. For incapacity due to the employee's pregnancy, prenatal medical care or child birth;
5. For the employee's own serious health condition that renders the employee unable to perform (an) essential function(s) of his/her position;
6. For certain qualifying exigencies involving the military *or*;
7. To care for a covered servicemember.

The minimum 12 months of service are not required to be consecutive. Employment prior to a break in service of seven years or more will not be counted, *unless*:

- (1) The break in service was caused by the employee's active duty with the National Guard or Reserve *or*;
- (2) There was a written agreement that the employer intended to rehire the employee after the break in service.

Employees who are unsure about their eligibility for FML should contact the department supervisor, respective college Human Resources Director, or the System Office Employee Relations Department for more information.

## **II. Determining Available FML Time**

KCTCS uses the following methods for determining available leave:

### **A. Employees not in the Military**

Eligible employees may request up to 12 weeks of FML in a twelve (12) month period. When an employee requests FML, the 12 months immediately prior to the effective date of the current requested leave is the time frame used to determine whether FML time is available. The amount of time available depends on any FML time used within that twelve (12) month period. *The twelve (12) month period "rolls back" from the effective date of the current requested leave to the prior twelve (12) month period.*

### **B. Employees in the Military**

Eligible employees may request up to 26 weeks of FML during a single twelve (12) month period to care for a spouse, son, daughter, parent or next of kin with an illness or injury incurred in the line of duty while in the Armed Forces, National Guard or Reserves.

Eligible employees may use any of his or her 12 weeks allotment to take FML because of any qualifying exigency arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.

*The twelve (12) month period "rolls forward" from the effective date of the current requested leave for Military Servicemember leave.*

## **III. Employee Responsibilities** (wherein include but are not necessarily limited to):

- **Foreseeable Leave** - If the need to use FML is foreseeable, then the employee shall give at least 30 days' prior notice of the need to take leave. When 30 days' notice is not feasible, the employee shall give notice as soon as practicable (within 1 or 2 business days of learning of the need for leave except in extraordinary circumstances). Failure to provide such notice may be grounds for delaying the start of FML. The employee shall give notice as soon as practicable (within 2 business days, if feasible) if the dates of the leave change, are extended, or were unknown initially.
- **FML Forms** - Forms are located on the KCTCS forms page, or may be requested from the supervisor or Human Resources. Whenever possible, completed forms should be submitted to the employee's department head, respective college Human Resources Director or system office Employee Relations (for system office employees). It is the joint responsibility of the employee's department supervisor or designee and a Human Resources designee to determine the approval for FML.

Employees shall provide sufficient information for KCTCS to determine if the leave may qualify as FML.

- Certification and Recertification - Employees shall be required to provide a certification and periodic recertification supporting the need for FML, in accordance with the law.
- Reporting Absences - Employees shall follow standard policies, procedures and practices for reporting absences. Calling in sick without providing more information shall not be considered sufficient notice for FML.

**IV. Employer Responsibilities** (*wherein include but are not necessarily limited to*):

- When an employee requests leave, KCTCS shall inform the employee whether he/she is eligible under the FMLA. If the employee is eligible, KCTCS shall provide the employee with a written notice that includes details on any additional information he or she will be required to provide. If the employee is not eligible under the FMLA, KCTCS shall provide the employee with a written notice indicating the reason for ineligibility.
- If leave is designated as FML, KCTCS shall inform the employee in writing and provide information on the amount of leave that shall be counted against the employee's approved 12 or 26 week entitlement.
- If an absence is identified as FML after the leave has begun or after the employee has returned, the absence may retroactively be designated as FML within two working days of the employee's return to work.
- The application of this FML policy shall be coordinated with applicable KCTCS policies and procedures regarding temporary disability leave/sick leave, vacation leave, unpaid medical leave, long term disability, special leave/other leave, and all other applicable laws, regulations, and/or KCTCS policies.
- If the requested leave exceeds the approved period of FML, KCTCS shall evaluate the request in accordance with other applicable laws, regulations, and/or KCTCS policies and procedures. KCTCS reserves the right to disapprove such a request at its sole discretion.

**V. Pay, Benefits, and Protections** (*wherein include but are not necessarily limited to*):

**A. Pay During an FML**

- FML is unpaid leave unless employees are eligible for short- or long-term disability payments and/or workers' compensation benefits under those insurance plans if leave is taken because of an employee's own serious health condition. During a period of

disability, employees may be eligible for disability pay benefits. Provisions for disability benefits are stated in the applicable policies, statutes, and regulations regarding eligibility for long-term or short-term disability, benefit amounts, filing deadlines, and filing procedures.

- KCTCS requires employees to substitute available paid leave time for unpaid leave during FML leave. Employees' pay status during an FML leave shall be determined in accordance with KCTCS policies regarding paid and unpaid leaves of absence. FML leave runs concurrent with other paid leave time, where necessary. Therefore, during FML, employees shall use any paid leave in accordance with all leave policies, including banked leave time, but excluding up to 10 days of annual leave and 10 days of sick leave (when requested by the employee) for employees in the 18A/151B personnel system, prior to going into a leave without pay status. Paid and unpaid FML shall be coordinated with other leaves and benefits policies, procedures, and regulations.
- In no case may the substitution of paid leave time for unpaid leave time result in an employee receiving more than one hundred (100) percent of their salary.
- KCTCS requires eligible employees taking FML for a qualifying exigency or to care for an injured or ill family in the military to substitute paid sick, vacation or banked leave time for unpaid FML.

#### **B. Benefits During an FML**

- KCTCS shall maintain the employee's health benefits as if the employee continued to be actively employed during an approved FML. KCTCS shall deduct the employee's portion of the health plan premium as a regular payroll deduction if paid FML is substituted for unpaid FML. **The employee shall pay his/her portion of the premium through one of the following payment options if FML is unpaid:**
  - a) **Pre-payment of premiums (employee pays premiums prior to going on leave)**
  - b) **Pay-as-you-go (employee pays premiums while on leave)**
  - c) **Catch-up (employer initially pays employee's share of premiums, then is reimbursed by the employee upon employee's return from FML.)**
- The employee shall make arrangements with the benefits office prior to going on FML, or as soon as possible for unforeseeable FML conditions, regarding the chosen method of payment for the employee's portion of health care premiums. **An employee's healthcare coverage may cease if the employee's premium payment is more than 30 days late.**
- If the employee chooses not to return to work for at least 30 calendar days at the end of the leave period, the employee will be required to reimburse KCTCS for the cost of

the premiums paid by KCTCS for maintaining coverage during the unpaid FML, unless the employee cannot return to work because of a serious health condition or other circumstances beyond the employee's control.

- KCTCS will maintain the employee's health coverage under any group health plan(s) on the same terms as if the employee had continued to work during FML. The use of FML shall not result in the loss of any employment benefit that accrued prior to the start of the employee's FML.

### **C. Job Restoration under FMLA**

- Upon returning from FML, most employees shall be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- KCTCS requires a fitness for duty form to be completed and submitted upon return from FML. Employees shall obtain this form from the KCTCS forms page, his or her supervisor, the respective college Human Resources Director or system office Employee Relations. This form shall be completed by the employee's physician or health care provider who completed the FML form.
- If any employee is unable to perform the essential functions of his or her position because of a physical or mental condition, the employee has no right to restoration to another position. Under such circumstances, the ADA shall determine KCTCS' obligation to the employee.

## **VI. Definitions** (*wherein include but are not necessarily limited to*):

### **Medical Certification**

- If the employee is requesting FML because of the employee's own serious health condition or a covered relation's serious health condition, the employee and the relevant healthcare provider shall supply appropriate medical certification.
- KCTCS shall notify the employees who request FML of the requirement for medical certification and when it is due (no more than 15 days after the employee requests leave). If the employee provides at least 30 days' notice of FML, he or she should also provide medical certification before the FML is scheduled to begin. The employer shall allow seven (7) days for the employee to cure any deficiency on the medical certification form.
- Failure to provide requested timely medical certification may result in denial of leave until it is provided.
- KCTCS, at its expense, may require an examination by a second healthcare provider designated by KCTCS, if it reasonably doubts the medical certification initially provided. If the second healthcare provider's opinion conflicts with the original

medical certification, KCTCS, at its expense, may require a third, mutually agreeable, healthcare provider to conduct an examination and provide a final and binding opinion.

- KCTCS may require subsequent medical recertification in accordance with the FMLA. Failure to provide requested recertification, except in extraordinary circumstances, may result in the delay of further leave until it is provided.

### **Married Couples**

- A husband and wife who are eligible for FML and are both employed by KCTCS may be limited to a combined total of 12 weeks of leave during any twelve (12) month period if the leave is taken:
  - 1) For birth of the employee's son or daughter or to care for the child after birth;
  - 2) For placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement; or
  - 3) To care for the employee's parent with a serious health condition.

### **Intermittent FML**

- Intermittent FML may be taken for the following:
  - 1) a serious health condition of a parent, son, or daughter,
  - 2) the employee's own serious health condition,
  - 3) a serious injury or illness of a covered service member.

In order to qualify as intermittent FML, the leave shall require treatment by a health care provider periodically, rather than for one continuous period of time. This may include leave of periods from an hour or more to several weeks. Eligible employees may take the FML intermittently (in separate blocks of time due to a single health condition) or on a reduced-schedule leave (reducing the usual number of hours worked per workweek or workday) if medically necessary.

- KCTCS may temporarily transfer an employee on approved intermittent or reduced-schedule FML to an available alternative position that better accommodates the recurring leave, and which has equivalent pay and benefits. If the FML is unpaid, KCTCS shall reduce the employee's salary based on the amount of time actually worked.
- Employees are required to make reasonable efforts to schedule intermittent FML for planned medical treatment in order not to unduly disrupt KCTCS operations.
- FML is not permitted to be taken on an intermittent basis when used to care for the employee's own child during the first year following birth, or to care for a child

placed with the employee for foster care or adoption unless it is in the best interest of KCTCS, and agreed upon by KCTCS and the employee in advance.

- All intermittent FML shall be tracked by the employee and the employee's supervisor. Absences resulting from intermittent FML shall be reported to the supervisor and college Human Resources Director (for respective college employees) or system office Employee Relations (for system office employees) as soon as possible or at the end of each pay period.

**Exemption for “Key Employees”**

- Key employees (i.e., highest-paid 10 percent of employees at a worksite or within a 75-mile radius of that worksite) may not be returned to their former or equivalent position following a leave if restoration of employment will cause substantial economic injury to KCTCS. This fact-specific determination shall be made by KCTCS on a case-by-case basis. KCTCS shall notify employees if they qualify as “highly compensated” employees only if KCTCS intends to deny reinstatement, and of the employees' rights in such instances.

**Military Family Leave**

- A covered servicemember is defined as a current member of the Armed Forces, National Guard or Reserves, who is undergoing medical treatment, recuperation, therapy, or is otherwise in outpatient status or on the temporary disability retired list for a serious injury or illness.

**Military Caregiver Leave**

- When both husband and wife work for KCTCS, the combined amount of leave that can be taken by the husband and wife to care for a covered servicemember is 26 weeks in a single 12-month period.
- Covered servicemember leave may be taken only during one 12-month period, on a per-covered servicemember, per-injury basis. The single 12-month period is measured forward from the date the employee's leave to care for the covered servicemember begins.

**Qualifying Exigency Leave** (*wherein includes but is not necessarily limited to*):

- 1) Short-notice deployment (up to 7 days of leave).
- 2) Attending certain military events.
- 3) Arranging for alternative childcare.
- 4) Addressing certain financial and legal arrangements.
- 5) Periods of rest and recuperation for the servicemember (up to 5 days of leave).
- 6) Attending certain counseling sessions.
- 7) Attending post-deployment activities (available for up to 90 days after the termination of the covered service member's active duty status).
- 8) Any other activities arising out of the servicemember's active duty or call to active duty that are agreed upon by KCTCS and the employee.

***KCTCS ADMINISTRATIVE POLICIES AND PROCEDURES***

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KCTCS reserves the right at any time to modify, alter, or amend this policy, whole or in part, retroactively or otherwise, in such respect and to such extent that is necessary to meet any legal requirement and to the extent necessary to accomplish this purpose. KCTCS is hereby granted authority to issue interpretations and clarify rules under this policy and/or coordinate it with or modify other rules of the organization as required for compliance with the law.

6-22-98  
Approval Date

1-4-07; 5-5-09  
Date(s) of Last Review

1-4-07; 5-5-09  
Date(s) of Last Revision  
*(Include all dates in  
chronological order)*

(SIGNED) 5-5-09  
Recommended by Date

(SIGNED) 5-5-09  
President, KCTCS Date