SUBJECT: Family and Medical Leave Policy

INTRODUCTION

Midland College had adopted this Family and Medical Leave Policy in accordance with the Family and Medical Leave Act of 1993 (“FMLA”). Under this policy, eligible employees may take up to 12 weeks of unpaid leave per year for the birth or placement of a child, or for the serious health condition of the employee, or of the employee’s spouse, child, or parent, subject to the provisions of this policy and the FMLA. Leave taken under this policy will be referred to as “FMLA leave.” This policy replaces and supersedes any prior family/medical or short term disability leave policies.

ELIGIBILITY

To be eligible for leave under this policy, an employee must have been employed by Midland College for at least 12 months and must have worked at least 1,250 hours during the 12-month period preceding the commencement of the requested leave.

REASONS FOR LEAVE

Eligible employees may take leave under this policy for the following reasons:

1. birth of a son or daughter, and to care for the newborn child;
2. placement of a son or daughter for adoption or foster care;
3. when the employee is needed to care for an immediate family member (i.e., spouse, son or daughter, or parent) with a serious condition; or
4. when the employee is unable to perform the functions of his/her position because of the employee’s own serious health condition.

Terms used in this policy have the following meanings:

- “Spouse” means husband or wife as recognized under State law including common law marriage.

- “Parent” means a biological parent or an individual who acted as a parent to the employee when the employee was a child. To “act as a parent” means having day-to-day responsibilities to care for and financially support a child. “Parent” does not include parent “in-laws.”
“Son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom the employee acts as a parent if the child is under 18 years of age, or a child over 18 years of age for whom the employee acts as a parent if the child is incapable of self-care because of a mental or physical disability.

“Foster care” means 24-hour care for a child in substitution for, and away from the child’s parents or guardian. Foster care involves an agreement between the State and the foster family that the foster family will take care of the child.

“Serious health condition” means any illness, injury, impairment, or physical or mental condition that involves:

1. any period of incapacity or subsequent treatment in connection with inpatient care (i.e., overnight stay) in a hospital, hospice, or residential medical care facility; or

2. continuing treatment by a health care provider which includes any one or more of the following:

   A. a period of incapacity requiring absence from work, school, or other regular daily activities, of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to such condition for which:

      i. the employee of family member is treated two or more times for the injury or illness by a health care provider;

      ii. the employee or family member is treated for the injury or illness two or more times by a provider of health care services (e.g., physical therapy) under orders of, or on referral by, a health care provider; or

      iii. the employee or family member is treated for the injury or illness by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider (e.g., a course of medication or therapy) to resolve the health condition.

   B. any period of incapacity due to pregnancy, or for prenatal care;

   C. any period of incapacity or treatment by (or under the supervision of) a health care provider for a chronic serious health condition that requires periodic visits for treatment, continues over an extended time period, and may cause an episodic rather than continuing period of incapacity (e.g., asthma, diabetes).
D. any period of incapacity which is permanent or long-term and for which
the employee or family member is under the continuing supervision of, but
not necessarily being actively treated by, a health care provider due to a
serious long-term or chronic condition or disability which (e.g., persons
with Alzheimer’s, persons who have suffered a stroke, or persons in the
terminal stages of a disease).

E. any period of absences to receive multiple treatments by (or pursuant to
the supervision of) a health care provider either for restorative surgery
following an accident or injury, or for a condition that would likely result
in an absence of three consecutive calendar days in the absence of medical
treatment.

In the case of the employee’s own “serious health condition,” the employee must be unable to
perform the essential functions of his/her job.

X “Health care provider” means

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or
surgery by the State in which the doctor practices;

(2) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors
(limited to treatment consisting of manual manipulation of the spine to correct a
subluxation as demonstrated by X-ray to exist) authorized to practice as defined
under State law;

(3) Nurse practitioners and nurse-midwives who are authorized to practice under
State law and who are performing within the scope of their practice as defined in
State law;

(4) Christian Science practitioners listed with the First Church of Christ Scientist in
Boston, Massachusetts;

(5) any health care provider from whom an employer or employer’s group health
plan accepts certification of claims;

(6) A health care provider listed above who practices in a country other than the
United States in a manner consistent with such countries’ laws.
MAXIMUM AMOUNT OF LEAVE ALLOWED

An employee may take a maximum of 12 weeks leave under this policy within a 12-month period of time. The 12-month period is a “rolling” period, measured backward from the date an employee uses FMLA leave. Each time an employee takes FMLA leave, the employee’s remaining leave allotment would be any balance of the 12 week that has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, the employee would be able to take an additional four weeks’ leave.

Leave taken for the birth or placement of a child must be completed within the 12 month period beginning on the date of the birth or placement.

Spouses who are both working for Midland College are limited to a combined total of 12 weeks’ leave during any 12-month period, when the leave is due to the birth or placement of a child, or to care for a parent with a serious health condition.

SUBSTITUTION OF VACATION OR SICK LEAVE

If an employee requesting FMLA leave does not have any accrued paid vacation or sick leave, the FMLA leave will be without pay. If the employee has accrued vacation or sick leave, the employee’s vacation or sick leave must first be substituted for any unpaid leave.

The substitution of accrued paid vacation or sick leave for unpaid leave during a period of FMLA leave will not extend the 12 week period of FMLA leave provided by the Family and Medical Leave Act.

Employees on FMLA leave may also be eligible for workers’ compensation and any such leave will be credited against an employee’s 12 week period.

INTERMITTENT OR REDUCED SCHEDULE LEAVE

When certified to be medically necessary, an employee requesting leave for the serious health condition of the employee or a member of the employee’s immediate family may take FMLA leave on an intermittent or reduced schedule basis.

Intermittent leave is leave taken in separate blocks of time due to single illness or injury, rather than for one continuous period of time and may include leave taken in periods from an hour or more to several weeks. Intermittent leave may not be taken in increments of less than 1 hour.

Reduced schedule leave is a leave schedule that reduces an employee’s usual number of working hours per workweek or hours per workday.
Employees requesting FMLA leave on an intermittent or reduced schedule basis must attempt to schedule their leave so as not to disrupt the College’s operations. In addition, the College may temporarily transfer such an employee to an alternative position with equivalent pay and benefits that better accommodates the leave schedule.

If an employee takes leave on an intermittent or reduced schedule basis, only the amount of leave actually taken will be counted toward the 12-week FMLA leave allotment.

If the intermittent or reduced schedule leave is unpaid, the employee’s wages or salary will be reduced by the amount of leave taken.

NOTICE OF LEAVE

If the need for the FMLA leave is foreseeable, the employee must give the Company at least 30 days’ advance written notice of the need for leave. This notice should be provided by completing the College’s Request for Leave form, which is available from the Human Resources Department. The employee should complete the Request for Leave form and give it to his/her supervisor who will then consult with the Human Resources Department to determine whether the request qualifies for FMLA leave under this policy.

If it is not possible to give 30 days’ notice of foreseeable leave, or if the need for the leave was not foreseeable, employees must notify the College of the need to leave as soon as practicable under the circumstances. Ordinarily this would mean at least verbal notice to the employee’s supervisor within 1 to 2 business days of when the need for the leave becomes known to the employee. This verbal notice should, at a minimum, state the reason for the leave and its anticipated timing and duration. The employee should complete a Request for Leave form as soon as practicable.

When planning medical treatment, the employee should consult with the employee’s supervisor and make a reasonable effort to schedule the leave so as not to disrupt unduly the Company’s operations, subject to the approval of the health care provider.

If an employee fails to give 30 days’ notice for foreseeable leave with no reasonable excuse for the delay, the College may delay the start of the leave until at least 30 days after the date the employee provided notice of the need for the leave.

MEDICAL CERTIFICATION

If an employee requires leave due to the serious health condition of the employee or a member of the employee’s immediate family, the employee and the attending health care provider may be required to provide medical certification of the need for the leave.
When FMLA leave is requested, the employee may be required to obtain certification from the employee’s or family member’s health care provider.

This form must be returned to the Human Resources Department within 15 calendar days following the day the employee made the request for leave, unless it is not practicable under the particular circumstances, in which event the employee must return the form as soon as practicable.

In the case of foreseeable leave, failure to provide requested medical certification in a timely manner may result in delay of the requested leave until the certification is provided. When the need for the leave was not foreseeable, failure to provide the requested medical certification within a reasonable time under the pertinent circumstances may result in the discontinuance of the leave.

The College may request re-certification at reasonable intervals during the leave. Re-certification will not be required more often than every 30 days unless: (1) the employee requests an extension of period of leave requested; (2) circumstances described in the original certification have changed significantly; or (3) the College receives information that casts doubt on the continuing validity of the certification.

The College may require the employee requesting leave to obtain a second opinion from a health care provider designated by the College and at the College’s expense. If the opinions of the employee’s and the College’s designated health care providers differ, the College may require the employee, at the College’s expense, to obtain certification from a third health care provider designated jointly by the employee and the College. This third opinion will be binding.

When the FMLA leave is taken because of an employee’s own serious health condition, the employee must have his/her health care provider complete the College’s Medical Certification of Fitness to Return to Work form (available from Human Resources) before the employee will be permitted to return to work.

**STATUS REPORTS**

An employee on FMLA leave must contact the Human Resources Department on the 1st and 15th day of each month (or on the first workday following the 1st and 15th, if those days fall on a weekend or holiday) to report on the status of the reason for the leave, the employee’s intent to return to work, and the expected date of return.

**RETURNING FROM LEAVE**

Following the completion of FMLA leave, the employee will be reinstated to his or her former position, or to an equivalent position, except as provided below.
An employee returning from FMLA leave may be denied reinstatement if:

1. the employee’s employment would have been terminated (e.g., by layoff, job elimination, conclusion of temporary employment, etc.) had the employee continued to be actively employed during the FMLA leave period;

2. the employee is no longer qualified for the position due to the employee’s inability to satisfy the requirements of the position (such as training, licensing, certification, etc.) as a result of the leave, and the employee fails to fulfill those requirements after being given a reasonable opportunity to do so;

3. the employee is no longer able to perform the essential functions of the job and there is no reasonable accommodation that can be made for the employee without undue hardship;

4. the employee is a “key” employee (a salaried employee who is among the highest paid 10 percent of employees) and denial of reinstatement is necessary to prevent substantial and grievous economic injury to the operation of the College; or

5. the employee fails to provide medical certification of fitness to return to work (in this event, reinstatement will be denied until the certification is provided.)

HEALTH INSURANCE AND OTHER BENEFITS

If paid leave is substituted for a portion of FMLA leave, the employee will continue to actively participate in all applicable benefit plans, including health insurance, for so long as the FMLA leave is paid. This means that the employee’s portion of health insurance premiums and other benefits contributions will continue to be deducted from the employee’s regular payroll check.

If FMLA leave is unpaid, the Company will maintain the employee’s group health insurance benefits under the same terms as if the employee had continued to be actively employed. The employee must pay the employee’s portion of the premium during the leave. Payment of the employee’s portion of the premium should be submitted to the Human Resources Department and is due on the 15th day of each month. If the employee’s portion of the premium is more than 30 days late, the employee’s health insurance coverage may cease.

If FMLA leave is unpaid, the employee will not accrue vacation or sick leave during the period of FMLA leave. However, the period of FMLA leave will be counted as continued service (i.e., no break in service) for other benefit plans.
While an employee is on unpaid FMLA leave, the College may maintain other employer-provided insurance coverage (such as life, dental and long-term disability insurance) for the employee under the same terms as if the employee had continued to be actively employed. If such other insurance coverage is maintained, the provisions of this policy regarding payment and reimbursement of health insurance premiums will apply to the payment and reimbursement of premiums for such coverage.

The College reserves the right to terminate or change its health insurance and other benefit plans while an employee is on FMLA leave. In such event, the employee on FMLA leave will be notified of the termination or change, and will be subject to the termination or change to the same extent as if the employee were not on leave.