

TITLE: PERSONNEL-FAMILY MEDICAL LEAVE ACT

1. Purpose and History of FMLA

In 1993, the federal government passed the Family and Medical Leave Act (FMLA). This law was enacted because many employers had not been sensitive to work/family situations.

FMLA enables eligible employees (see #2 below) to take **unpaid** leaves for certain family and medical events. The law provides these eligible employees with up to 12 weeks of unpaid leave and allows them to return to their job or an equivalent position after the leave has expired. This document covers all of Gogebic Community College's (the "College") FMLA policies and procedures **and should be read in conjunction with pertinent provisions of applicable collective bargaining agreements.**

This policy and procedure is a summary of the FMLA law and regulations and how they are administered at Gogebic and is not intended to be a substitute for the FMLA, subsequent amendments, or the regulations. Nothing in this policy statement is intended to supersede or contradict relevant Federal or State laws.

2. Employees Eligible to Take FMLA

To be eligible, **all** of the following criteria must be met:

- A) You have been employed with the College at least 12 months prior to the commencement of the leave (12 months need not be consecutive), *and*
- B) You have worked at least 1250 hours during the 12 month period prior to the commencement of the leave (unpaid leaves do not count toward this 1250 hour requirement, only time worked is counted), *and*
- C) You are employed at a worksite at which 50 or more employees are employed within 75 miles (*all College employees fulfill this requirement*).

3. Situations Covered by FMLA

- A) **Family Leave** – Used for the birth of a son or daughter, and to care for the newborn child, or the placement with the employee of a son or daughter for adoption or foster care. These leave types must be completed within 12 months of the birth. Adoption or foster placement and supporting documentation must be given to the College (see Section 9(A)(3) below). For purposes of confirmation of family relationship, Gogebic may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship.

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- B) **Medical Leave** – Used for serious health conditions (as defined in C below) that are considered qualifying events under FMLA. The College will require a completed Certification of Health Care Provider Form for the serious health condition (see Section 9(A)(1) below). It may be used for:
- 1) Your **own** serious health condition that makes you unable to perform the functions of your job.
 - 2) The care of one of the following individuals with a serious health condition: (The College will require reasonable documentation and/or statement of family relationship to verify legitimacy).
 - **Spouse** - A husband or wife for purposes of marriage as defined by Michigan law, including common law marriage to the extent permitted by Michigan law.
 - **Son or daughter** – A biological, adopted, foster child, stepchild, legal ward, or a child of a person standing in place of a parent, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability.
 - **Parent** - A biological parent or an individual who stands or stood in place of a parent to you when you were a son or daughter. The term does not include parents “in law.”
- C) **Serious Health Conditions that Qualify Under FMLA** – The following is a summary of medical situations which **might** qualify for a medical leave under FMLA
- 1) **Inpatient Care**
 - Hospital or any residential medical care facility (i.e., an overnight stay)
 - Includes any period of incapacity or subsequent treatment in connection with the inpatient treatment
 - 2) **Absence plus treatment**
 - A period of incapacity of more than three consecutive calendar days due to serious illness or injury
 - Includes two visits to a health care provider. These visits must occur within 30 days of the beginning of the period of incapacity and the first visit to the health care provider must take place within seven days of the first day of incapacity.
 - 3) **Pregnancy**
 - Any period of incapacity due to pregnancy or prenatal care
 - 4) **Chronic conditions requiring treatment**
 - Requires periodic visits (at least two visits to a health care provider per year) for treatment
 - Continues over an extended period of time

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- May cause episodic rather than a continuing period of incapacity
 - Examples: asthma, diabetes, epilepsy
- 5) **Permanent/long-term conditions requiring supervision**
- Period of incapacity which is permanent or long-term
 - Individual must be under the continuing supervision of a health care provider
 - Individual need not be receiving active treatment
 - Examples: Alzheimer's disease, severe stroke, terminal stages of a disease
- 6) **Multiple treatments for non-chronic conditions**
- Periods of absence to receive multiple treatments (including recovery) for restorative surgery after an accident or injury, or conditions that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.
 - Examples: chemotherapy, radiation treatment, physical therapy for severe arthritis, kidney dialysis
- 7) **Other examples of serious health conditions** (*Provided the conditions of this section are met. This list is not meant to be inclusive*)
- Heart attacks or heart conditions requiring bypass surgery
 - Most forms of cancer
 - Back conditions requiring extensive therapy or surgery
 - Severe nervous disorders
 - Pregnancy, miscarriages, complications or illnesses related to pregnancy (*e.g.*, severe morning sickness), and need for prenatal care
 - Childbirth and recovery from childbirth
 - Appendicitis
 - Pneumonia
 - Severe arthritis
 - Certain serious injuries caused by accidents on or off the job
 - Treatment for substance abuse (but not absences caused by use of substance)
- D) **Non-Qualifying Health Conditions** - The following is a non-exhaustive summary of medical situations (see Appendix A for detail) that would **not** ordinarily meet the FMLA definition of "serious health condition," unless complications arise or inpatient hospital care is required:

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- 1) Short-term illnesses
 - Common cold, upset stomach, flu, ear aches
 - Minor ulcers
 - Headaches other than migraine
 - Routine dental or orthodontic problems including periodontal disease
 - 2) Other health conditions or medical reasons generally not considered serious
 - Cosmetic treatments (unless inpatient care is required or unless complications develop)
 - Routine physical examinations
 - A regimen of treatment that can be initiated without a visit to a health care provider
- E) **Active Duty Family Leave** –Used by an employee whose spouse, son, daughter, or parent is on active military duty, or has been notified of an impending call to active military duty to deal with any “qualifying exigency” arising from the call to active military duty with the National Guard and Reserves. Qualifying exigencies are the need to make necessary arrangements related to the departure of the service person. *The College may require that a request for the Active Duty Leave be supported by a certification stating the call to active duty.*
- F) **Injured Service Member Family Leave** – Used by the spouse, son, daughter, parent or “next of kin” (defined as “nearest blood relative”) of a member of the Armed Forces (including a member of the National Guard or Reserves) so the employee can care for the service member who is undergoing inpatient or outpatient medical treatment, recuperation, therapy, or is otherwise on the temporary disability retired list, because of a “serious illness or injury” incurred during active duty.
- 1) “Serious Illness or Injury” under a Service Member Family Leave is defined as any condition arising “in the line of duty” which makes the service member medically unfit to perform the duties of the member’s office, grade, rank, or rating.
 - 2) The College may require that a certification issued by the health care provider of the service member be provided.
 - 3) Qualifying employees are entitled to a combined total of 26 weeks of leave (including traditional FMLA leave) in a 12-month period, as opposed to the usual 12 weeks.

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You may take up to 12 weeks of FMLA leave per plan year - July 1 through June 30 of each year, (with the exception of an Injured Service Member Family Leave which is up to 26 weeks) in the following forms:

- A) As twelve (12) consecutive weeks.
- B) On an intermittent basis when medically necessary. While not required by law, the College may allow you to take FMLA leave on an intermittent basis for the birth, adoption or placement of a child. You must attempt to schedule intermittent leave so as to not disrupt normal College operations.
- C) On a part-time work schedule when medically necessary or when mutually agreed upon by the College and the employee for the birth adoption or placement of a child.
- D) An employee on an FMLA leave will not have time counted against their FMLA allowance when the employer's activities temporarily cease for one or more weeks and employees are generally not expected to report for work (i.e. winter break).

5. Continuation of Pay During FMLA Leave

FMLA was designed to allow employees the minimum benefit of taking an unpaid leave while having their job protected. The College goes further than this law by allowing and requiring you to be paid for certain FMLA qualifying events, when you have accrued paid leave time available for use.

- a. **Paid FMLA** - The College allows you to be paid during an FMLA leave if you have any time in your paid leave banks, and the FMLA event qualifies for paid leave under the terms of your Collective Bargaining Agreement or other College policy (please note, if you are eligible for long term disability benefits, see B below as other rules apply). While you are on FMLA and using paid leave time, you will continue to accrue time in your leave banks.
- b. **Unpaid FMLA** - If you do not have time in your leave banks, or your FMLA event does not qualify for paid leave under your Collective Bargaining Agreement or other College policy, you will go unpaid during the FMLA leave. While on an unpaid FMLA leave you will **not** accrue time in your leave banks.

6. Benefits During FMLA Leave

- a. **Paid FMLA** – The College will continue benefits as defined in your collective bargaining agreement or employment agreement.
- b. **Unpaid FMLA** - The College will maintain employer paid medical, dental and vision benefits while you are on an unpaid FMLA leave. Cash-in-lieu of medical

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insurance will not be continued during an unpaid FMLA leave. Other benefits are **not** maintained at the College's expense during unpaid FMLA leaves unless otherwise specified in your collective bargaining agreement. Optional/supplemental insurance benefits fully paid by you may continue to be maintained at your expense provided advanced arrangements are made with Human Resources.

If you do not return from FMLA or return for less than thirty (30) calendar days, you will be responsible for reimbursing the College for all fringe benefit expenses the College incurred while you were on FMLA, except as noted in 2 below.

- 1) If payment arrangements are not made in advance, the College will withhold the premiums from your last check and/or your termination pay if you are due any. Any remaining balances will be your responsibility to reimburse to the College.
- 2) The College will not recover any premiums paid on your behalf if:
 - The continuation, recurrence or onset of a serious health condition which would otherwise entitle you to leave under the FMLA.
 - Circumstances beyond your control (at discretion of the College) prevent you from returning to work.

C) **Employee Share of Premiums** - If you pay a share of the cost of your health insurance premiums, you will be responsible for maintaining those payments while you are on an FMLA leave.

1. **Paid FMLA Leaves** - The College will continue to deduct your share of your health insurance premiums from your paycheck, in the same manner as if you were still working.
2. **Unpaid FMLA Leaves** - Please contact the Human Resources Office to make arrangements for paying your share of your health insurance premiums while on leave.

10. **Concurrent Leaves**

- A) Workers' Compensation will run concurrently with the twelve (12) week FMLA entitlement if a work related injury meets the FMLA "serious health condition" requirement. If you will be paid by workers' compensation insurance during a work-related injury leave, the College will not require you to use accrued paid leave.
- B) Any leave of absence or benefit clause (i.e. Long Term Disability Insurance) in your collective bargaining agreement will run concurrently with the twelve (12) week FMLA entitlement, if you are eligible and otherwise meet the FMLA "serious health condition" requirement. If you will be paid by the College's Long Term

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Disability Insurance during your FMLA leave, you may not choose to substitute or supplement your LTD payments with accrued paid leave.

11. Designation of Leave

A) General

- 1) In all circumstances, it is the College's responsibility and right to designate a leave of absence as qualifying under the FMLA. If during a leave of absence the College learns you are off for a reason that qualifies for FMLA, the College's policy is to designate FMLA retroactively to the earliest possible date when the need for the leave began, provided you are still on leave.
- 2) Designation will be based on information received from you or your spokesperson and/or the medical certification. The College will act upon letters and forms filed and processed in conjunction with leaves, workers compensation and disability in making FMLA designations. Designation can occur the following two ways:
 - **By Employee Request** - If you request FMLA by submitting the FMLA Application (see Appendix B for this form) along with appropriate supporting documentation, the College will designate the leave as FMLA or non-FMLA as soon as possible, but generally within two (2) business days after receiving such a request. When the College designates FMLA retroactively, your leave banks will be charged for work time missed back to the earliest possible date.
 - **Without Employee Request** - The College, absent a specific request, may designate a leave of absence as FMLA based on available information.
- 3) The College will attempt to notify employees of the designation of their leave orally and will provide written confirmation of the leave designation by hand delivery or by mail to the employee's last known address. You are responsible for providing the College with your current mailing address at all times.
- 4) If you disagree with the administration of this FMLA Policy, you should contact the Compensation & Benefits Administrator. If the matter is not resolved to your satisfaction, you may appeal the matter to the Chief Human Resources Officer. If you still feel that the matter is not resolved after appealing to the Chief Human Resources Officer, then you may contact the Wage and Hour Division of the U.S. Department of Labor.

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B) Preliminary Designation

A preliminary designation of FMLA leave may be made by the Human Resources Office based upon information provided by you or otherwise available to the Human Resource Office. However, all supporting documentation that you are required to submit to the Human Resource Office must be received within 15 calendar days after the preliminary designation is made.

- 1) If the proper documentation has not been received within 15 calendar days from the start of the preliminary designation, the leave may be delayed until the required certification is provided.
- 2) If Human Resources require a second or third opinion, the leave may be left as a preliminary designation until all medical opinions have been received.
- 3) If information or medical certification fails to confirm that the leave falls under the FMLA guidelines, Human Resources will notify the employee within two (2) business days after receipt of all documentation.

12. Certification of Medical Condition For Purposes of FMLA

A) Certification

- 1) **For Your Own Serious Health Condition** - Human Resources will require you, at your expense, to submit a Certification of Health Care Provider form (Appendix D) from the attending health care provider to substantiate a medical leave.
 - All required medical certification documents must be submitted to Human Resources no later than 15 calendar days after the College has requested such documentation.
 - If you don't provide the requested medical certification and other documentation to Human Resources in the time frame indicated above and there are no extenuating circumstances – the request for FMLA may be denied.
 - If extenuating circumstances arise to prevent submission of certification, it is your responsibility to notify Human Resources in writing prior to the end of the 15 calendar day period.
- 2) **For Serious Health Condition of Child, Spouse or Parent** - You will be required to submit a Certification of Health Care Provider form (Appendix C) from the attending health care provider if the request is for the medical care of a son, daughter, spouse or parent. The same time requirements for submitting this exist as for #1 above.

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- 3) **For Family Leave** - Human Resources will not require *medical* certification if you are requesting Family Leave, however, supporting documentation will be required when you are requesting such leave for the birth of a child, adoption of a child, or placement of a child for foster care. Please call Human Resources to determine what type of documentation is needed for your specific situation. Again, the same time requirements for submitting the documentation exist as for #1 above.

B) Inadequacy of certification

- 1) Human Resources will notify you in writing whenever the medical certification and/or other documentation is incomplete. You will have an extension of seven (7) calendar days from the receipt of notification to correct the problem.
- 2) If Human Resources has reason to question the medical certification, you will be required to obtain a second opinion from a doctor selected by the College. The second opinion will be fully paid by the College.
- 3) If the first and second opinions conflict, the College reserves the right to obtain a third opinion. The health care provider giving the third opinion will be approved by both parties in good faith. The third opinion will be fully paid by the College.
- 4) The third opinion shall be final and binding.

Re-certification

- 1) If the leave is extended past the first medical certification and there is remaining FMLA leave time available for you to use, the College will require you to re-certify by submitting another medical certification form.
- 2) The College may request a new medical certification form for an ongoing condition every six months in conjunction with an absence.
- 3) The College may request a new medical certification form each leave year for medical conditions that last longer than one year.
- 4) The re-certification will be at your expense.

13. The Employee's Responsibilities

- A) You are required to notify the Human Resources Office and your supervisor as soon as you become aware of your need to take FMLA by completing the regular leave request forms. When you intend to take family or medical leave because of an expected birth, placement for adoption or foster care, or because of a planned medical treatment that qualifies for leave under the FMLA, you must submit an application for leave at least thirty (30) calendar days before the leave is to begin.
- B) You are responsible to make certain that all required medical certifications and other documentation as described in this policy are completed and have been received by

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Human Resources. You must also adhere to the policies and procedures of the College related to this procedure, such as, the terms of your Collective Bargaining Agreement and the provisions of the Board Policies.

- C) If you pay a share of the cost of your health insurance premiums, you will be responsible for maintaining those payments while you are on an FMLA leave.
 - 1. **Paid FMLA Leaves** - The College will continue to deduct your share of your health insurance premiums from your paycheck, in the same manner as if you were still working.
 - 2. **Unpaid FMLA Leaves** - Please contact the Human Resources Office to make arrangements for paying your share of your health insurance premiums while on leave.

14. Returning to Work

- A) Before you return to work from FMLA for reason of your own serious health condition, you are required to provide to the Human Resources Office a doctor's statement documenting that you are medically able to return to work.
- B) For intermittent leaves, if job safety concerns exist, the College may require a fitness-for-duty certification before you may return to work.
- C) The College will comply with FMLA requirements regarding your reinstatement either to the same position you held when your FMLA leave began or to a position with equivalent pay, benefits and other terms and conditions of employment. Under this FMLA policy, the College cannot guarantee that you will be returned to your original job, however the terms of your collective bargaining agreement may grant you the right to return to your former position.

In cases where you cannot be returned to your former position, the determination as to whether a position is an "equivalent position" will be made by the College.

- D) You are entitled to return to work from an FMLA leave prior to the original date you requested for the leave to end. To do so, you must provide written notification of intent to return to work a minimum of two (2) working days prior to returning and must provide evidence of fitness for duty, if applicable.

15. Miscellaneous

Collective Bargaining Agreement - This FMLA procedure will be administered consistent with the terms of the applicable Collective Bargaining Agreement. Since leaves provided in the labor agreements are usually more generous than the 12-week

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FMLA limit, the time provided by labor agreements is simultaneously counted as FMLA leave; FMLA leave cannot be added to other leaves to extend the employee's absence.

Appendix A
Definition of a Serious Health Condition from the FMLA Regulations
(Section 114 of 29 CFR 825)

A. For purposes of FMLA, "serious health condition" entitling an employee to FMLA leave means an illness, injury, impairment, or physical or mental condition that involves:

- (1) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (for purposes of this section, 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), or any subsequent treatment in connection with such inpatient care; or
- (2) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
 - (i) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - (a) Treatment 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
 - (b) Treatment 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.
 - (ii) Any period of incapacity due to pregnancy, or for prenatal care.
 - (iii) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - (a) Requires periodic visits (at least two visits to a health care provider per year) for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - (b) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - (c) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

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(iv) A period of incapacity 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. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(v) 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 incapacity 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).

B. Treatment for purposes of Paragraph A includes (but is not limited to) 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. Under Paragraph (A)(2)(i)(b), a 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 (e.g., oxygen). A regimen of continuing treatment that includes 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 a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

C. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

D. Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

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E. Absences attributable to incapacity under Paragraphs (A)(2) (ii) or (iii) qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

“Serious Health Conditions”

A “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. **Hospital Care:** Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
2. **Absence Plus Treatment:** A period of incapacity of more than three (3) consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:
 - a. Treatment two times by a health care provider, a nurse or physician’s assistant under direct supervision of a health care provider, or a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; These visits must occur within 30 days of the beginning of the period of incapacity and the first visit to the health care provider must take place within seven days of the first day of incapacity or
 - b. Treatment 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.
3. **Pregnancy:** Any period of incapacity due to pregnancy, or for prenatal care.
4. **Chronic Conditions Requiring Treatments:** A chronic condition which:
 - a. Requires periodic visits (at least two visits to a health care provider per year) for treatment by a health care provider, or a nurse or physician’s assistant under direct supervision of a health care provider;
 - b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)
5. **Permanent/Long-term Conditions Requiring Supervision:** A period of incapacity, 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. Examples include Alzheimer’s, a severe stroke, or the terminal stages of a disease.

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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 incapacity 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).
7. **Injured Service Member Family Leave:** Any condition arising “in the line of duty” which makes the service member medically unfit to perform the duties of the member’s office, grade, rank or rating.