

**GOUCHER COLLEGE**  
**FAMILY and MEDICAL LEAVE POLICY**

I. Purpose and Applicability

The purpose of this policy is to implement the Family and Medical Leave Act of 1993 (FMLA), 29 USC Section 2601 et seq. You are eligible to take up to 12-weeks of unpaid family/medical leave within any 12-month period and to be restored to the same or an equivalent position upon your return from leave provided that you have worked for Goucher for at least one year, and for at least 1250 hours in the last 12 months. Note that special rules regarding the counting of hours apply to employees who return to work after performing covered service under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

The 12-month period in which you may take 12 weeks of leave will be calculated as a rolling 12 months. If you have already taken an approved FMLA leave, the subsequent leave will be calculated according to the 12 months preceding the request for leave. For example, if you have taken eight weeks of leave during the 12 months preceding the request for leave, you are entitled to four more weeks of leave. If you are a nine-month or ten-month employee, the weeks that you do not work during the summer will not count against your entitlement to 12 weeks of family/medical leave. If one or more College holidays occur during a week when you are taking family/medical leave, the full week will still be counted against the 12-week entitlement.

In certain circumstances described in paragraph II.B, you may be entitled to 26 weeks of leave in a 12-month period in order to care for a covered servicemember.

II. Reasons for Leave

A. Family and Medical Leave:

You may take family/medical leave for any of the following reasons:

- (1) the birth of a son or daughter and in order to care for such son or daughter;
- (2) the placement of a son or daughter with you for adoption or foster care and in order to care for such son or daughter ;
- (3) to care for a spouse, domestic partner, son, daughter, or parent with a “serious health condition;”
- (4) because of your own “serious health condition” which renders you unable to perform one of the essential functions of your position; or
- (5) because of any qualifying exigency arising out of the fact that your spouse, domestic partner, son, daughter, or parent is a military member on covered active duty status or call to covered active duty status (or has been notified of an impending call or order to covered active duty) in the Armed Forces. Note that a call to covered active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States pursuant to one of the provisions of law identified on page 7 of this policy (definition of “covered active duty” or “call to covered active duty status” ).

Leave because of reasons (1) or (2) must be completed within the 12-month period beginning on the date of birth or placement.

If Goucher employs both spouses or domestic partners, the two employees will be limited to a combined total of 12 weeks of leave during any 12-month period if leave is taken because of reasons (1) or (2) or to care for a parent with a serious health condition.

#### B. Military Caregiver Leave:

You may take family/medical leave to care for a covered servicemember with a serious injury or illness if you are the spouse, domestic partner, son, daughter, parent, or next of kin of the servicemember. You are entitled to a total of 26 weeks of leave during a single 12 month period to care for the servicemember. The leave described in this paragraph shall only be available once during a single 12-month period. The 12-month period begins on the date that the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date; if an eligible employee takes less than his or her 26 weeks of leave during that 12-month period, then the balance of leave is forfeited. This 26 week period of leave is available on a per-covered-service-member, per-injury basis.

If Goucher employs both spouses or domestic partners, the two employees will be limited to a combined total of 26 weeks of leave during the single 12-month period if leave is taken to care for a covered servicemember or a combination of leave is taken to care for a covered servicemember, for the birth or placement of a healthy child, or to care for a parent with a serious health condition.

During the single 12-month period described in this section, an eligible employee shall be entitled to a combined total of 26 weeks of leave under paragraphs II. A and B (for example, if an employee takes 12 weeks of leave under paragraph II.A, he or she is entitled to an additional 14 weeks of leave under paragraph II.B). Nothing in this section shall be construed to limit the availability of leave under paragraph II.A during any other 12-month period.

### III. Notice of Leave

If your need for family/medical leave is foreseeable (such as birth, adoption, planned medical treatment or caring for a covered servicemember), you must give the Office of Human Resources 30 days prior written notice. If this is not possible, and, in cases of leave due to a qualifying exigency related to covered active duty or call to covered active duty, you must at least give notice as soon as is reasonable and practicable. Failure to provide such notice may be grounds for delay of leave. Where the need for leave is not foreseeable, you are expected to notify the Office of Human Resources within one to two business days of learning of your need for leave, except in extraordinary circumstances. "Request for Family/Medical Leave" forms are available from the Office of Human Resources. You are required to use these forms when requesting leave.

If the leave is for the birth of a child or for the placement of a child for adoption or foster care, the total length of the leave must be specified at the time the notice is given.

If the leave is related to a qualifying exigency arising from covered active duty or call to covered active duty, you must submit a certification in a form specified by the Secretary of Labor, which is available in the Office of Human Resources

#### IV. Medical Certification

If you are requesting leave because of your own, a covered servicemember or an eligible family member's serious health condition, you must provide appropriate medical certification. You may obtain a medical certification form from the Office of Human Resources. Failure to provide required medical certification in a timely manner might result in denial of leave until it is provided. Except for certifications relating to a covered servicemember, Goucher, at its expense, may require an examination by a second health care provider designated by Goucher. If the second health care provider's opinion conflicts with the original medical certification, Goucher, at its expense, may require a third, mutually agreeable, health care provider to conduct an examination and provide a final and binding opinion. Except for certifications relating to a covered servicemember, the College may require subsequent medical recertification on a reasonable basis or otherwise provided by the FMLA.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, Goucher will ask physicians to exclude any genetic information when responding to requests for medical information as part of FMLA. 'Genetic information' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

#### V. Reporting While On Leave

If you take leave because of your own serious health condition, to care for an eligible family member with a serious health condition, to care for a covered servicemember or because of a qualifying exigency, you must contact the Office of Human Resources each month regarding the status of the health condition or qualifying exigency and your intention to return to work.

#### VI. Use of Accrued Leave for Family/Medical Leave

If you request leave due to your own serious health condition, for the birth of a child, for the placement of a child with you for adoption or foster care, or to care for an eligible family member or covered servicemember with a serious health condition, Goucher requires you to use your accrued sick and/or vacation leave (for which you will be paid), except that you may save up to two weeks of vacation leave. The remaining portion of your family/medical leave is unpaid.

If you request family/medical leave because of a qualifying exigency described in paragraph II.A.5 Goucher requires you to use accrued vacation leave (for which you will be paid), except that you may save up to two weeks of vacation leave.<sup>1</sup>

The substitution of paid leave time for unpaid leave time does not extend the 12-week or 26-week leave period.

## VII. Medical Benefits

During an approved family/medical leave, Goucher will maintain your existing Goucher health benefits (if applicable). If paid leave is substituted for unpaid family/medical leave, the College will deduct your portion of the health plan premium as a regular payroll deduction. If a portion of your leave is unpaid, you must remit your portion of the health plan premium on a monthly basis to the Office of Human Resources by the first of each month. If your premium payment is more than 30 days late, your health insurance may be canceled, or at Goucher's option, Goucher may pay your share of the premiums during your family/medical leave, and deduct these payments from your paycheck when you return to work. If your health coverage is discontinued, it will be restored when you return to work.

If you elect not to return to work at the end of the leave period, you will be required to reimburse Goucher for the cost of the premiums paid by Goucher for providing coverage during your leave, unless you cannot return to work because of your own serious health condition, or a serious health condition of an eligible family member or a covered servicemember, or other circumstances beyond your control. (Deciding to stay at home with a well, newborn child would not be beyond your control, but staying home because of a serious health condition would be).

## VIII. Retirement Plan Benefits

During an approved family/medical leave, Goucher will continue to make the usual employer contributions on the basis of salary paid and to deduct from your salary the employee contribution to your retirement plan on the basis of salary paid, for employees who receive this benefit.

## IX. Intermittent and Reduced Schedule Leave

Leave taken because of your own or an eligible family member's serious health condition and leave taken to care for an eligible servicemember under paragraph II.B may be taken intermittently (in separate blocks of time) or on a reduced leave schedule (reducing the usual number of hours you work per workweek or workday) only if medically necessary. Leave taken because of a qualifying exigency described in paragraph II.A.5 may be taken intermittently or on a reduced leave schedule provided the employee provides a copy of a certification that may be required by the

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<sup>1</sup> Note that if you are a spouse, parent, stepparent, child, stepchild or sibling of a servicemember, you may take leave from work on the day that a servicemember is leaving for or returning from active duty outside the United States and you are not required to use paid vacation leave for such leave.

Secretary of Labor. If leave is unpaid, Goucher will reduce your salary based on the amount of time actually worked. In addition, while you are on an intermittent or reduced schedule leave for reasons of medical necessity or to care for a qualified servicemember, and the leave is foreseeable based on planned medical treatment, Goucher may temporarily transfer you to an alternative position that better accommodates your recurring leave and which has equivalent pay and benefits. Goucher will not transfer you to an alternative position if you are taking leave because of a qualifying exigency described in paragraph II.A.5.

Leave taken because of the birth or adoption of a child or the placement of a child with you for foster care may not be taken intermittently or on a reduced leave schedule.

Employees who take intermittent leave for planned medical treatment must make a reasonable effort to schedule such treatment so as to not unduly disrupt Goucher's operations.

#### X. Accrual of Leave

While on any unpaid portion of a family/medical leave, you will not earn or accrue any additional sick leave or vacation leave. While on paid portions of a family/medical leave, you may earn additional leave in accordance with applicable College policies (i.e., you will only earn leave when paid for a full month).

#### XI. Returning From Leave

If you take leave because of your own serious health condition, you are required to provide medical certification that you are fit to resume work. Employees failing to provide the required certification will not be permitted to resume work until it is provided. Employees taking intermittent leave are not required to obtain such certification.

#### XII. Job Protection

You will be restored to your former position or an equivalent position when you return to work at the conclusion of a family/medical leave. However, you are not entitled to any greater right of reinstatement than if you had been continuously employed during the leave period. For example, if you were hired for a specific term or only to perform work on a specific project and the term or project is over and Goucher would not otherwise have continued to employ you, you are not entitled to reinstatement. If there are reductions in the work force while you are on family/medical leave and your position is eliminated, then you will not be restored to your position.

If the Vice President for Human Resources determines that your former position cannot be held open for the duration of the leave, the Vice President for Human Resources will restore you to an equivalent position. If this determination is made after the family/medical leave begins, then the Vice President for Human Resources will notify you of the decision and of the equivalent position to which you will be assigned upon your return. If you wish to keep your former position, you have the right to return to work within ten working days after being notified.

Goucher reserves the right to deny job restoration to key employees if such denial is

necessary to prevent substantial and grievous economic injury to the operations of the employer.

### XIII. Definitions

*For the purpose of this policy, the following definitions apply:*

A. “Adoption” means legally and permanently assuming the responsibility of raising a child as one’s own.

B. “Contingency operation” means a military operation that:

(1) Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.

C. “Continuing treatment” means *one or more of the following*:

(1) A period of incapacity lasting **more than three consecutive, full calendar days** and any subsequent treatment or period of incapacity related to the same condition, that also involves:

- Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse 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
- 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.

Note that “treatment by a health care provider” means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity. Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.

(2) Any period of incapacity due to pregnancy or prenatal care. Employees are entitled to leave for such conditions even if the employee does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three days. A husband or domestic partner is entitled to FMLA leave if needed to care for his/her pregnant spouse or partner

who is incapacitated; or if needed to care for her during her prenatal care; or if needed to care for the spouse or domestic partner following the birth of a child if the spouse or domestic partner has a serious health condition.

(3) Any period of incapacity or treatment for a “chronic serious health condition.” A “chronic serious health condition” is one that requires periodic visits to a health care provider (at least twice a year) or to a nurse or physician’s assistant under direct supervision of a health care provider, continues over an extended period, and may cause episodic rather than continuing periods of incapacity. Examples of such conditions include asthma, diabetes, and epilepsy. Employees are entitled to leave for such conditions even if the employee (or a family member) does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three days.

(4) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Examples include Alzheimer’s disease, a severe stroke, or the terminal stages of a disease.

(5) Any period of absence to receive multiple treatments by a health care provider for restorative surgery after an accident or injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days if it were not treated. Examples of such treatments include chemotherapy or radiation treatment for cancer, physical therapy for arthritis, or dialysis for kidney disease.

***Please note that the following conditions do not qualify as serious health conditions and do not entitle an employee to FMLA leave: ailments such as the common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, elective cosmetic treatment, and routine eye exams and physical examinations. Further, a condition that requires a regimen of bed rest, exercise, drinking fluids, and taking non-prescription medication, which can occur without visiting a health care provider, is not a serious health condition. A substance abuser may take family/medical leave only if he/she will be treated by a health care provider or at a referral facility during the leave period.***

D. “Covered active duty” or “call to covered active duty status” means:

(1) In the case of a member of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and,

(2) In the case of a member of the Reserve components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to relevant portions of Title 10 of the United States Code E. “Covered servicemember” means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness; or a covered veteran who is undergoing medical treatment, recuperation, or

therapy for a serious injury or illness.

F. “Covered veteran” means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

G. “Domestic partner” has the same meaning as it has for purposes of determining eligibility under the health insurance and benefits program offered by Goucher College (note that a domestic partner does not need to elect to receive health benefits under Goucher’s health insurance program in order to be a “domestic partner” within the meaning of this policy).

H. “Eligible Family Member” means spouse, domestic partner, parent, son or daughter. If verification of family member status has not been previously provided, the college may require proof of family status (e.g., marriage license, birth certificate, evidence of domestic partner status).

I. “Foster care” means 24-hour care for children in substitution for, and away from, their parents or guardian, where State action is involved in the removal of the child from parental custody.

J. “Health Care Provider” includes: licensed MD’s and OD’s, nurses, physician’s assistants under direct supervision of a health care provider, podiatrists, dentists, clinical psychologists, optometrists, chiropractors authorized to practice in the State of Maryland, nurse practitioners and nurse-midwives authorized to practice under Maryland State law, clinical social workers and Christian Science practitioners.

K. “Key employee” means a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees.

L. “Military caregiver leave” means leave taken to care for a covered servicemember with a serious injury or illness under the Family and Medical Leave Act of 1993.

M. “Military member” is a current member of the Regular Armed Forces, the National Guard, or the Reserves.

N. “Needed to care for” an eligible family member encompasses: (1) physical and psychological care; and (2) where the employee is needed to fill in for others providing care or to arrange for third party care of the family member.

O. “Next of kin of a covered servicemember” means the nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA:

- Blood relatives who have been granted legal custody of the covered servicemember by court



decree or statutory provisions;

- Brothers and sisters,
- Grandparents,
- Aunts and uncles; and
- First cousins.

When no written designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members in that level shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When a written designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin.

P. "Outpatient status" means, with respect to a covered servicemember who is a current member of the Armed Forces, the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

Q. "Parent" includes biological, adoptive, step or foster father or mother, and individuals who stood in loco parentis, but does not include parents-in-law.

R. "Parent of a covered servicemember" means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents-in-law.

S. "Qualifying exigency" means:

- Short notice deployments, (i.e., deployment on seven or less days of notice) to address any issue that arises from the military member's notification of an impending call or order to covered active duty in support of a contingency operation for a period of seven days from the date of notification;
- Military events and related activities that are related to the military member's active duty or call to covered active duty status;
- Certain childcare and school activities related to the child of a military member on active duty or call to covered active duty status;
- Certain financial and legal arrangements on behalf of a military member on active duty or call to covered active duty status;

- Counseling, provided that the need for counseling arises from the covered active duty or call to covered active duty status of a military member;
- Rest and recuperation, to spend time with a military member who is on short-term, temporary, rest and recuperation leave during the period of deployment (Leave taken for this purpose can be used for a period of 15 calendar days beginning on the date the military member commences each instance of rest and recuperation);
- Post-deployment activities, including issues arising from the death of a military member while on covered active duty status;
- Providing parental care to a military member's parent who is incapable of self-care. A parent is defined as the biological, adoptive, step, or foster father or mother, or any other individual who stood in loco parentis to the military member when the member was under 18 years of age. The military member must be the spouse/domestic partner, son, daughter, or parent of the employee requesting qualifying exigency leave and the need to provide such care arises from the covered active duty or call to covered active duty status of the military member);
- Additional activities which arise out of the military member's covered active duty or call to covered active duty status provided that the employer and employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of such leave.

T. "Reserve components of the Armed Forces," for purposes of qualifying exigency leave, include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation.

U. "Serious health condition" means any illness, injury, impairment, or physical or mental condition that involves: (1) inpatient (overnight) care in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work or perform normal daily activities) or any subsequent treatment in connection with such inpatient care; or (2) continuing treatment by a health care provider.

V. "Serious injury or illness" means:

(1) In the case of a current servicemember of the Armed Forces, including a servicemember of the National Guard or Reserves, an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(2) In the case of a covered veteran, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:

- (a) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or
- (b) A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or
- (c) A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or
- (d) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

W. "Son" or "Daughter" includes biological, adopted and foster children, stepchildren, legal wards, and children for whom the employee stands in loco parentis (this includes "son" or "daughter" of a domestic partner), who is of any age.

X. "Son or daughter on covered active duty or call to covered active duty status" means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status and who is of any age.

Y. "Son or daughter of a covered servicemember" means the servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the servicemember stood in loco parentis, and who is of any age.

Z. "Spouse" means a husband, wife, spouse of a state-recognized same-sex marriage, or partner in a state-recognized civil union.

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