



Policy Name:	Mercy College Employee Paid Time Off and Leave Policy		
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Responsible Executive:	Chief Financial Officer	Revised:	<ol style="list-style-type: none"> 1. PTO and Leave Policy (Revised, July 6, 2020) 2. PTO and Leave Policy (July 2, 2019) 3. FMLA Policy (2008) 4. HR Leave Policies (2008)
Responsible Office:	Office of Human Resources	Contact:	Director of Human Resources

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I. INTRODUCTION

Mercy College recognizes that employees occasionally need time away from the workplace to address personal needs and family obligations while maintaining balance with the requirements of their job. The following are the Paid Time Off (“PTO”) policies and Leave of Absence policies that employees are entitled to in the Mercy College workplace:

- Paid Time Off (“PTO”)
- New York State Paid Family Leave Law (“PFL”)
- Family Medical Leave Act (“FMLA”) Leave
- New York State Short-Term Disability Leave (“DL”)
- Worker’s Compensation
- Long-Term Disability Leave (“LTD”)
- Paid and Unpaid Leaves of Absence Pursuant to Other New York State, Westchester County and New York City Laws

As will be set forth fully in this Policy, some of the leaves referenced above may run concurrently. Specific questions regarding these leaves and policies should be directed to the Office of Human Resources.

If there are any inconsistencies between this Policy and local, state or federal law relating to PTO or Leaves of Absence, the latter shall apply.

Employees who are members of the union should refer to the Collective Bargaining Agreement (CBA) for all contractual terms in effect relating to PTO and other leaves under this Policy.

II. PAID TIME OFF (PTO) OPTIONS

Mercy College provides the following Paid Time Off (PTO) benefits to employees:

- Sick and Safe Leave
- NYS Paid Family Leave (see Section III. below)
- Vacation Leave
- Personal Time
- Bereavement Leave
- Holiday Pay
- Summer Days Pay
- College Closure Pay
- Jury Duty Pay
- Quarantine Leave
- Voting Pay
- Other Leaves Pursuant to New York State, City and County Laws

Employees should keep accurate records of their PTO time taken. All PTO balances are available on Banner Self-Service, accessible through Mercy Connect. Managers are provided with access via Time and Attendance recording to view the PTO balances for their employees.

A. Definitions

For purposes of this Policy, the following definitions shall apply for all PTO categories:

- “Eligible Employees” are defined as are those who regularly and customarily are scheduled to work at least twenty (20) hours per week for a minimum of 1,250 hours or 36 weeks per year.¹
- “Fiscal Year” shall mean from July 1 through June 30th.
- “Family member” is defined as an employee’s child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, and the child or parent of an employee’s spouse or domestic partner.
 - “Child” is defined as a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.
 - “Parent” is defined as a biological, foster, step, or adoptive parent, or a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child.

B. Other Terms

- PTO for all categories will *not* be counted as hours worked for the purposes of determining overtime.

¹ Union employees should refer to the Collective Bargaining Agreement.

- The College reserves the right to alter or discontinue the provision of any of these benefits at any time, with or without notice, except as otherwise required by law.
- PTO taken in accordance with this Policy should be discussed in advance with management, when feasible, and notated appropriately on the employee's timesheet.

C. Sick and Safe Leave

Under New York State law, employees are eligible for up to 56 hours of paid leave per year for sick and safe leave, at the accrual rates set forth below. Employees may use accrued leave following a verbal or written request to the College for the following reasons impacting the employee or a member of their family for whom they are providing care or assistance with care for sick leave or safe leave as set forth below.

1. Sick Leave:

- For mental or physical illness, injury, or health condition, regardless of whether it has been diagnosed or requires medical care at the time of the request for leave; or
- For the diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or need for medical diagnosis or preventive care.

2. Safe Leave:

Safe leave can be taken when the employee or employee's family member has been the victim of domestic violence as defined by the State Human Rights Law, a family offense, sexual offense, stalking, or human trafficking due to any of the following as it relates to the domestic violence, family offense, sexual offense, stalking, or human trafficking:

- To obtain services from a domestic violence shelter, rape crisis center, or other services program;
- To participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members;
- To meet with an attorney or other social services provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding;
- To file a complaint or domestic incident report with law enforcement;
- To meet with a district attorney's office;
- To enroll children in a new school; or
- To take any other actions necessary to ensure the health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

3. Leave Accruals

All employees (including part-time employees) begin accruing paid sick time pursuant to this Policy at the start of their employment at a rate of 1 hour for every 30 hours worked. For certain employees, accruals will be at the monthly accrual rate set forth below (which is *not* in addition to the state mandated accrued amount up to 56 hours per year):²

Eligible employees hired prior to July 1, 2002 will accrue sick leave benefits at the following rate:

- Clerical: 12 days per year (1.0 days for every full month of service)
- Technical: 24 days per year (2.0 days for every full month of service)
- Professional: 24 days per year (2.0 days for every full month of service)
- Administrative: 30 days per year (2.5 days for every full month of service)

Regular employees hired on or after July 1, 2002 will accrue sick leave benefits at the following rate:

- Clerical: 12 days per year (1.0 days for every full month of service)
- Technical: 12 days per year (1.0 days for every full month of service)
- Professional: 12 days per year (1.0 days for every full month of service)
- Administrative: 30 days per year (2.5 days for every full month of service)

The maximum number of unused sick days permitted to accumulate for all eligible employees (prior to and after July 1, 2002) are the following:

- Clerical: 90 calendar days
- Professional: 90 calendar days
- Technical: 90 calendar days
- Administrative: 180 calendar days

The following terms apply with respect to accruals:

- If an employee's benefits reach this maximum, further accrual of sick leave benefits will be held as overage until the employee has reduced the balance below the limit; at which time, the amount of time held as overage will be put towards replenishing the balance to the maximum accrued amount.
- Employees are only required to be credited with leave time for hours worked and not for hours spent using sick leave time under the law or any other paid time.

² UAW union employees should see the CBA.

- Employees do not accrue leave for payments that are not for hours worked, such as bonuses or subject-to-call time. However, time that is considered “hours worked,” including on-call time, training time, and travel time, must be counted for the purposes of accruing leave.

4. Carryovers and Usage

The following terms apply for carryovers and usage of sick and safe time:

- Carryovers: All outstanding sick leave balances may be carried over to the next fiscal year. Employees do not have to wait to use time carried over.
- Leave increments: An employee may take accrued sick leave in increments of 3.5 hours or less as may be needed.
- Sick leave benefits are calculated based on the employee’s regular rate of pay at the time of the absence.
- Employees with a minimum of five (5) years of service who experience a catastrophic illness and who have used up all of their sick, vacation and personal days may borrow sick leave from the next year's allotment upon approval from the Chief Financial Officer of the College.
- Unused accrued sick time **will not be paid** to an employee upon separation from the College.
- **An employee may only use up to 56 accrued hours for sick and safe leave for a family member.**
- Employees cannot be required to work from home or telecommute instead of taking sick leave. But the College can offer the employee the options of working from home or telecommuting. If employees voluntarily agree to work from home or telecommute, employees will retain the paid or unpaid sick leave that they have accrued.
- Employees who will be or have been absent for more than five (5) days must apply for any other available compensation and benefits, such as Short Term Disability or Worker’s Compensation (if applicable). Sick leave benefits will be used to supplement any payments that an employee is eligible to receive from Disability Insurance, or Worker’s Compensation. The combination of any such disability payments and sick leave benefits cannot exceed the employee’s normal weekly earnings.
- If the employee has exhausted their paid sick leave, they should consult with the Office of Human Resources regarding their eligibility for an unpaid leave as a disability

accommodation under the College's Policies and Procedures for Implementing Reasonable Accommodations or in catastrophic circumstances, to borrow time from the next year.

- Leave accruals may not be reduced or otherwise restricted if an employee changes positions, roles, or locations with the same employer. Paid sick leave under this law must be paid out at the employee's rate of pay at the time the leave is taken.
- Sick time benefits are intended solely to provide income protection in the event of illness or injury or other covered purpose (as set forth above) and may not be used for any other absence such as supplemental vacation days or holiday extension. Indications of abuse of sick time may include, but are not limited to, a pattern of: (1) use of sick time on or adjacent to weekends, regularly scheduled days off, holidays, vacation or pay day, (2) taking sick time on days when other leave has been denied, or (3) taking sick time on days when the employee is scheduled to work a shift or perform duties perceived as undesirable. Where employees are found to be using sick time in this fashion, where there is a pattern of abuse of the use of sick time, or where the employee is found to have lied about their use being a covered use, such employees will be subject to disciplinary action, including but not limited to termination of employment.

5. Notice and Documentation

- Employees who are unable to report to work due to illness or injury or other covered purpose must notify their supervisor before the scheduled start of the workday if possible. Notification should take place as soon as possible via email or a phone call. Should additional sick time be needed, the supervisor must be notified each day.
- Employees who use accrued paid sick time for more than three (3) consecutive days must provide supporting documentation to the Office of Human Resources indicating that the time off was needed for a covered purpose and must refer to the FMLA Policy when using accrued sick time.
- For employees assigned to the Manhattan or Bronx campuses, the College is required under New York City Law to:
 - reimburse employees who must pay for required documentation after three consecutive workdays of leave and
 - list on these employees' paystubs (or any document issued each pay period) the amounts of accrued and used leave and the total balance of accrued leave.

6. Additional Provisions

- An employer cannot retaliate against an employee in any way for exercising their rights to use sick leave. Furthermore, employees must be restored to their position of employment

as it had been prior to any sick leave taken. Employees who believe that they have been retaliated against for exercising their sick leave rights should contact the Department of Labor's Anti-Retaliation Unit at 888-52-LABOR or LSAsk@labor.ny.gov.

- Upon the request of an employee, the College is required to provide, within three (3) business days, a summary of the amounts of sick leave accrued and used by the employee in the current calendar year and/or any previous calendar year.

D. Vacation Leave

Mercy College provides vacation time benefits to Eligible Employees.

1. Accruals

Eligible Employees begin accruing vacation time pursuant to this Policy at the start of employment. Eligible Employees who work less than thirty-five (35) hours per week accrue vacation time on a pro-rated basis.

The amount of paid vacation time employees receive increase with the length of employment, and accrues on a monthly basis, as set forth in the following schedule:

- **Clerical:**
 - 1 to 5 years of service: 10 days/year, accrued monthly at the rate of 0.833 days
 - 5 to 10 years of service: 15 days/year, accrued monthly at the rate of 1.250 days
 - 10+ years of service: 20 days/year, accrued monthly at the rate of 1.667 days
- **Technical/Professional:**
 - 1 to 5 years of service: 15 days/year, accrued monthly at the rate of 1.25 days.
 - 5 to 10 years of service: 20 days/year, accrued monthly at the rate of 1.667 days.
- **Administrative:**
 - 20 days per year, accrued monthly at the rate of 1.667 days.

2. Carryovers and Usage

- Employees are allowed to carry five (5) days from one fiscal year to another.
- Employees will not be paid for any carry-over days when their employment ends with the College.
- Although vacation starts accruing during the probationary period, it cannot be used until the probationary period is successfully completed. An employee who leaves before the end of the probationary period will not be paid out for any accrued vacation time.
- It is preferable that vacation time be taken in half-day increments, though may be taken in hourly increments as necessary.

- Vacation time is paid at employee's regular rate of pay at the time of vacation.
- Upon separation of employment, employees will be paid for vacation time that is earned but unused as of the last day of work, provided the employee provides the College with **two (2) full weeks' notice of their resignation** and does not owe time that was used but not accrued. Should the employee not provide the College with two (2) weeks' notice, the employee will forfeit the right to be paid for unused vacation time that has been earned. **In cases of termination of employment by the College, the employee will not be eligible for payment of unused and earned vacation time.**

3. Notice and Documentation

Employees must obtain approval for vacation leave by their supervisor, or where an employee reports to more than one supervisor, they must secure the approval of all supervisors before the leave request is deemed to be officially approved. Requests will be reviewed and approved based on a number of factors, including business needs and departmental staff levels at the time of the request.

E. Personal Time Leave

Mercy College provides personal time benefits to Eligible Employees. Personal time shall be used for personal or household emergencies and should therefore not be used as vacation time or an extension of vacation or holidays. Personal days are not intended to be used as they are accrued.

1. Accruals and Carry-Over

- Regular Employees who work thirty-five hours or more per year are allotted three (3) personal days per fiscal year.
- It is preferable that personal time leave be taken in half-day increments, though may be taken in hourly increments as necessary.
- Personal time cannot be taken until after the probationary period.
- As with both sick and vacation time, personal time accrues after each pay period.
- Personal time is not paid out upon separation from the College, including during the probationary period, and may not be carried over from one year to the next.

2. Approvals

Supervisors should refrain from approving leaves for personal time that has not yet accrued, except under extraordinary circumstances in which the approval of the Director of Human Resources must be sought.

F. Bereavement Leave

Mercy College provides bereavement leave benefits to Eligible Employees who experience the death of a family member, as defined in Section II. For the purposes of Bereavement Leave only, a family member shall also include brother-in-law and sister-in-law.

The number of days for which an Eligible Employee may receive bereavement leave per deceased family member is as follows:

- Up to five (5) paid days per year will be granted for the death of a spouse, domestic partner, child, stepchild, son-in-law, daughter-in-law, grandchild, parent, stepparent, or sibling.
- Up to two (2) paid days per year will be granted for mothers-in-law, fathers-in-law, brothers-in-law, sisters-in-law, nieces, nephews, and grandparents.

Bereavement leave is pro-rated for Eligible Employees who work less than thirty-five (35) hours per week.

Employees who wish to take bereavement leave should notify their supervisor as soon as practicable as to the need for the leave.

An employee may request vacation time, personal time, or unpaid leave for any other close relationship of up to five (5) days, to a maximum of ten (10) days per year.

G. Holiday Pay

Mercy College will provide paid holiday time to Eligible Employees. Eligible Employees who work less than thirty-five (35) hours per week receive pro-rated holidays to the number of hours per week that they work. If a recognized holiday falls during an eligible employee's regular shift, holiday pay will be provided.

Mercy will grant paid holiday benefits to Eligible Employees on the holidays listed below:

- * New Year's Day (January 1)
- * Martin Luther King, Jr. Day (third Monday in January)
- * Presidents' Day (third Monday in February)
- * Memorial Day (last Monday in May)
- * Friday before Memorial Day
- * Independence Day (July 4)
- * Labor Day (first Monday in September)
- * Thanksgiving (fourth Thursday in November)
- * Day after Thanksgiving
- * Christmas Week (December 24 through January 1)

H. Summer Days Pay

Mercy College will provide paid summer days off to Eligible Employees who work at least thirty-five (35) hours per week for 1,260 hours or 36 weeks per year.

- Eligible Employees hired prior to September 1, 2008, will be eligible to take seven (7) Summer Days between May 1st and Labor Day as approved by their supervisor and consistent with business needs.
- Eligible Employees who are hired on or after September 1, 2008, will be eligible to take "Summer Days Off" as outlined in the schedule below:

The Friday before Memorial Day and

- After 1 full year of service: 1 day off
- After 2 full years of service: 2 days off
- After 3 full years of service: 3 days off
- After 4 full years of service: 4 days off (maximum)

I. Pay for College Closure Due to Inclement Weather or Emergencies

Eligible Employees shall receive regular pay for days in which the College provides official notice of closure of the particular campus for which an employee is assigned, due to inclement weather or another emergency or dangerous situation. Essential employees, as defined under the College's Human Resources Policy, may be required to work on such days. It is expected that all other (non-essential) employees will, to the greatest extent practicable, make every effort to work remotely in an effort to carry on College business as usual during such days. Regular employees who work less than thirty-five (35) hours per week are paid for such College closures on a pro-rated basis.

J. Jury Duty Pay

Eligible Employees receive regular pay for days during which they serve on jury duty, including but not limited to state and federal jury duty, and state and federal grand jury duty. The College reserves the right to review any notices provided to appear for jury duty. Part-time employees are paid for jury duty on a pro-rated basis.

K. PTO to Vote

All employees are eligible for the following PTO:

1. If a College employee is a registered voter and does not have sufficient time outside of their scheduled working hours, within which to vote on any day at which they may vote, at any election, the employee may, without loss of pay for up to two (2) hours, take off so much working time as will, when added to their voting time outside his or her working hours, enable the employee to vote.

2. If an employee has four consecutive hours either between the opening of the polls and the beginning of his or her working shift, or between the end of his or her working shift and the closing of the polls, he or she shall be deemed to have sufficient time outside his or her working hours within which to vote. If he or she has less than four consecutive hours he or she may take off so much working time as will, when added to his or her voting time outside his or her working hours enable him or her to vote, but not more than two hours of which shall be without loss of pay, provided that he or she shall be allowed time off for voting only at the beginning or end of his or her working shift, as the employer may designate, unless otherwise mutually agreed.

III. LEAVE OF ABSENCE PURSUANT TO NEW YORK STATE PAID FAMILY LEAVE (“PFL”)

Mercy College provides job-protected paid family leave to employees in accordance with the New York Paid Family Leave Law and applicable regulations (hereinafter “PFL”), and the terms and conditions of this Policy. This Policy sets forth the eligibility requirements for leave, the conditions for using leave, the process for requesting leave, etc., as well as how PFL interplays with FMLA, Disability and other College leaves.

A. Eligibility

Employees are eligible to receive PFL benefits based on meeting the following criteria:

1. Employees who have a regular work schedule of 20 or more hours per week and have been employed at least 26 consecutive weeks prior to the date paid family leave begins, or
2. Employees who have a regular work schedule of less than 20 hours per week and have worked at least 175 days prior to the date PFL begins are eligible for PFL.

Employees are eligible for PFL regardless of citizenship and/or immigration status.

B. Entitlement

PFL is available to eligible employees for:

1. Up to ten (10) weeks on or after January 1, 2020, at 60% of the employee’s average salary or 60% of the state average weekly wage, whichever is less as of January 1, 2020;
2. Up to twelve (12) weeks on or after January 1, 2021, at 67% of the employee’s average salary or 67% of the state average weekly wage, whichever is less as of January 1, 2021.

Employees may elect to supplement PFL benefits up to their full salary with any accrued paid sick and vacation leave available to them, to the maximum extent permitted by applicable law.

C. Qualifying Reasons for PFL

PFL may be taken within any 52-consecutive week period for any of the following reasons:

1. To participate in providing care, including physical or psychological care, for the employee's family member (child, stepchild, spouse, domestic partner, parent, stepparent, parent-in-law, grandchild or grandparent) with a *serious health condition; or
2. To bond with the employee's child during the first twelve months after the child's birth, adoption or foster care placement (see Section F below for interplay with FMLA); or
3. For qualifying exigencies, as interpreted by the Family and Medical Leave Act (FMLA), arising out of the fact that the employee's spouse, domestic partner, child, or parent is on active duty (or has been notified of an impending call or order to active duty) in the armed forces of the United States. The 52-consecutive week period is determined retroactively with respect to each day for which PFL benefits are currently being claimed.

*A serious health condition is an illness, injury, impairment, or physical or mental condition that involves:

1. In-patient care in a hospital, hospice or residential health care facility; or
2. Continuing treatment or continuing supervision by a health care provider.

For the purpose of this section, "providing care" may include necessary physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters and personal attendant services.

The employee must be in close and continuing proximity to the care recipient. This means present at the same location as the family member during the majority of the employment period from which leave has been taken. Travel necessitated for the purpose of securing medication or to arrange care for the family member, or other such deviations determined to be reasonably related to providing care, satisfy this requirement.

D. Payroll Deductions and Waivers

PFL benefits are financed solely through employee contributions via payroll deductions for non-union employees.³

An employee has the option to file a waiver of PFL and therefore not be subject to deductions when his or her regular employment is:

1. Twenty (20) or more hours per week but the employee will not work 26 consecutive weeks; or

³ Union employees should refer to the Collective Bargaining Agreement.

2. Less than twenty (20) hours per week and the employee will not work 175 days in a 52 consecutive week period.

E. Use of Leave

Employees do not need to use this leave entitlement in one block. Leave can be taken intermittently but must be in daily increments. Leave taken on an intermittent basis will not result in a reduction of the total amount of leave to which an employee is entitled beyond the amount of leave actually taken.

F. PFL Interplay with Short-Term Disability Leave (DL) and FMLA

1. Disability Leave

An employee who is eligible for both statutory short-term disability benefits (“DL”) (set forth in Section IV below) and PFL during the same period of 52-consecutive calendar weeks may not receive more than 26 total weeks of DL and PFL benefits during that period of time. In addition, DL and PFL benefits may not be used concurrently.

If an employee is unable to work and qualifies for workers’ compensation benefits, the employee may not use PFL benefits at the same time the employee is receiving workers’ compensation benefits. An employee receiving reduced earnings may be eligible for PFL. See the Office of Human Resources for more details.

2. FMLA

The College will require an employee who is entitled to leave under both the FMLA and PFL, to take PFL concurrently with any leave taken pursuant to the FMLA. When the total hours taken for FMLA in less than full-day increments reach the number of hours in an employee’s usual workday, the College may deduct one (1) day of PFL from an employee’s annual available PFL.

Please note that for mothers after childbirth, the first six (6) (or eight (8) weeks for a caesarean section) is deemed to be a disability under NY Law. An employee can take DL and FMLA during that period or can opt to take FMLA and PFL.

G. Leave Not Covered Under PFL

Leave *may not* be taken for any one of or for a combination of the following reasons:

1. For a birth mother’s pregnancy or prenatal conditions;
2. For an employee’s own health condition; and/or;
3. For an employee’s own qualifying military event.

These conditions are eligible for coverage under FMLA (and 1 and 2 could be covered under DL).

H. Requests for PFL

Employees must provide 30 days' advance notice before the date leave is to begin if the qualifying event is foreseeable. When 30 days' notice is not practicable for reasons such as lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, the employee must provide notice as soon as practicable and generally must comply with the College's normal call-in procedures. Failure by the employee to provide 30 days' advance notice of a foreseeable event may result in partial denial of the employee's benefits for a period of up to 30 days from the date notice is provided.

Employees must provide sufficient information to make the College aware of the qualifying event and the anticipated timing and duration of the leave. Employees must specifically identify the type of family leave requested. Employees also must provide medical certifications and periodic recertification or other supporting documentation or certifications supporting the need for leave.

Employees requesting paid family leave must submit a completed Request for Paid Family Leave or PFL-1 form and additional certification form(s) as follows to the carrier: (1) Bonding Certification: PFL-2 Form plus documentation; (2) Health Care Provider Certification: PFL-4 Form plus Personal Health Information (PHI) Release (PFL-3 Form); or (3) Military Qualifying Event: PFL-5 Form plus documentation. To obtain the PFL claim forms, employees must contact the College's PFL Carrier at 1-800-549-6514. Mercy College's NY DBL and PFL Policy number is 630844.

I. Job Benefits and Protection

During any PFL taken pursuant to this policy, the College will maintain coverage under any existing group health insurance benefits plan as if the employee had continued to work. The employee must make arrangements with Human Resources prior to taking leave to pay their portion of any applicable health insurance premiums each month.

The College's obligation to maintain health insurance coverage ceases if an employee's premium payment is more than 30 days late. If an employee's payment is more than 15 days late, the College will send a letter notifying the employee that coverage will be dropped on a specified date unless the co-payment is received before that date.

Employees who exercise their right to PFL will receive job protection. This means that upon the expiration of that leave, the employee will be entitled to be restored to the position held by the employee when the leave commenced, or to a comparable position with comparable benefits, pay, and other terms and conditions of employment. The taking of leave covered by PFL will not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. While on PFL, employees will continue to accrue sick or vacation time.

J. Questions and/or Complaints about PFL

If you have questions regarding this PFL policy, please contact the Office of Human Resources. For additional information concerning leave entitlements and obligations that might arise when PFL is either not available or exhausted, please consult the College's other leave policies or contact the Office of Human Resources. The College is committed to complying with the PFL and shall interpret and apply this policy in a manner consistent with the PFL. Employees who disagree with a denial of their claim for PFL may submit their dispute to arbitration. Employees will be provided with information about how to request arbitration.

Employees are protected from discrimination and retaliation for requesting or taking PFL. If employees believe their rights have been violated and/or denied job restoration as a result of requesting and/or taking PFL, they must send the Office of Human Resources a formal request for job reinstatement using the *Formal Request For Reinstatement Regarding Paid Family Leave (Form PFL-DC-19)*, which can be found in the forms section of <https://www.ny.gov/PaidFamilyLeave>. Employees must file the completed form with the College and send a copy to: Paid Family Leave, P.O. Box 9030, Endicott, NY 13761-9030. If the College does not comply with an employee's request for reinstatement within 30 days, the employee may file a PFL discrimination complaint with the Workers' Compensation Board using the *Paid Family Leave Discrimination Complaint (Form PFL-DC-120)*, which is also available on the New York Paid Family Leave website. Once an employee's complaint is received, the Board will assemble the employee's case and schedule a preliminary hearing in front of a Workers' Compensation Law Judge.

IV. FAMILY MEDICAL LEAVE ACT (FMLA) LEAVE OF ABSENCE

The Family Medical Leave Act (FMLA) entitles eligible employees to take unpaid, job protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken the leave.

A. Eligibility

FMLA leave is available to "eligible employees" as defined by law. To be eligible, an employee must have:

1. Been employed by the College for at least 12 months (which need not be consecutive); and
2. Worked for at least 1,250 hours during the 12-month period immediately preceding the requested commencement of the leave. Note: Only periods of actual work time count toward the determination of whether the employee has worked at least 1,250 hours during the preceding twelve months; periods of unpaid or paid leave, holidays, sick, etc. are excluded.

B. Leave Entitlement

Employees who are eligible are provided with up to 12 weeks of unpaid job-protected leave during the designated leave year for anyone, or for a combination, of the following “qualifying reasons”:

1. The birth of a child and to care for the newborn within one year of birth,
2. The placement for adoption or foster care;
3. To care for the employee’s spouse, son, daughter, or parent (excluding in-laws) who has a serious health condition, including any period of incapacity due to pregnancy and for prenatal medical care;
4. For employee’s own serious health condition (including any period of incapacity due to pregnancy and for prenatal medical care) that makes the employee unable to perform one or more essential functions of the employee’s job; and/or
5. Up to 26 weeks of leave during a single 12-month period to care for a child, parent or next of kin who is a covered service-member. Leave to care for a covered service-member is only available during a single 12-month period and, when combined with other FMLA-qualifying leave, may not exceed 26-weeks during the single 12-month period. The single 12-month period begins on the first day an eligible employee takes leave to care for the injured service-member.

The employee’s FMLA 1-week leave period entitlement will commence anew from the subsequent period of September 1st through August 31st, provided that the eligibility requirements are fulfilled (the “designated leave year”).

Entitlement to FMLA leave for the birth of an employee’s child expires at the end of the 12-month period beginning on the date of the birth.

Please refer also to Section IV below regarding eligibility for New York State Paid Family Leave (PFL), and the interplay between FMLA, PFL and Disability Leave (DL) entitlements.

C. Definitions

- **“Serious health condition”** is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee’s job, or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

- **“Qualifying exigencies”** may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, caring for the parents of the military member on covered active duty and attending post-deployment reintegration briefings.
- **“Covered service-member”** is a current 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 on the temporary disability retired list, for a serious injury or illness. These individuals are referred to in this policy as “current members of the Armed Forces.” Covered service-members also include a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness, and who was discharged or released from military service, under condition other than dishonorable, at any time during the five (5) years before the employee takes injured service-member leave to care for the veteran. These individuals are referred to in this policy as “covered veterans.”
- Note: The FMLA definitions of a “serious injury or illness” for current Armed Forces members and covered veterans are distinct from the FMLA definition of a “serious health condition” applicable to FMLA leave to care for a covered family member.

D. Use of Leave

FMLA leave is usually taken for a period of consecutive days, weeks or months. However, an employee does not need to use this leave entitlement in one block. Leave for any purpose can be taken intermittently or on a reduced leave schedule. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer’s operations.

When spouses are both employed by the College and eligible for FMLA leave, they will be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for the birth of the employee’s child or to care for the child after birth, for the placement of a child with the employee for adoption of foster care or to care for the child after placement, or to care for the employee’s parent with a serious health condition.

Employees will be required to use all accrued unused sick, personal and vacation days in that order during the leave period. Once such benefits are exhausted, the balance of the leave will be without pay. FMLA leave runs concurrently with Short Term Disability Benefits and New York State Paid Family Leave if applicable, and with certain exceptions. See Section IV.E. regarding the interplay of these leaves.

E. Employee Responsibilities

Employees must provide 30 days’ advance notice to the Office of Human Resources of the need to take FMLA leave when the need is foreseeable. When 30 days’ notice is not possible, the employee must provide notice as soon as practicable—meaning within the same day or next

business day of when the need for leave becomes known to the employee, taking into account all of the facts and circumstances.

To apply for FMLA leave, the employee must have the healthcare provider complete *The FMLA Leave Certification of Healthcare Provider for Family Member's Serious Health Condition* or *The FMLA Leave Certification of Healthcare Provider for Employee's Serious Health Condition*, and must be submitted to the carrier for processing. The applicant will be provided with the *FMLA Leave Notice of Rights and Responsibilities* at the time the application form is given to the employee.

Although employees do not have to share a medical diagnosis, employees must provide sufficient information to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave.

If the certification is deemed insufficient or incomplete, the employee will be notified in writing of what information is lacking and have seven (7) business days to provide the information.

Employees also must inform the College if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

If the employee is eligible for FMLA, she/he must inform her director supervisor of what the leave schedule will be as soon as practicable. The employee is not required to explain what the leave is for or to provide any medical diagnosis or paperwork to her/his supervisor.

F. College's Responsibilities

The College is required to inform employees requesting leave whether they are eligible under FMLA within five (5) business days of submitting the application, and this is done by a carrier on the College's behalf. If they are eligible, the College must provide the employee with a notice specifying any additional information required as well as the employees' rights and responsibilities under the FMLA. If they are not eligible, the College must provide a reason for ineligibility.

G. Benefits and Protections

During FMLA leave, the College shall maintain the employee's health insurance coverage as if the employee had continued to work. The employee must continue to pay for his/her contributions (via payroll if still receiving a salary, or by making arrangements for payment if on unpaid leave).

All Mercy College benefits that operate on an accrual basis (e.g. sick, personal and vacation) will accrue during the leave period as long as the employee is receiving a salary but will cease to accrue

when the leave becomes unpaid. Where an employee has exhausted all leave balances and is still on an FMLA leave, he/she may be eligible to receive benefits under Short Term Disability (see Section V. below). If the leave exhausts benefit time and Short-Term Disability benefits, then the employee may qualify for Long Term Disability benefits (see section VII. below).

Upon return from FMLA leave, subject to some exceptions, including situations where job restoration of “key employees” will cause the College substantial and grievous economic injury, the employee will have a right to return to or be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms and conditions. The College will notify employees if they qualify as “key employees” and advise them of their rights if it intends to deny reinstatement.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee’s leave.

H. Complaints

FMLA makes it unlawful for the College to:

- Interfere with, restrain or deny the exercise of any right provided under FMLA; and
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Employees may file a complaint internally with the College’s Equity Compliance Specialist if they believe they are being discriminated against, or their rights under the FMLA are not being protected. Employees can also file a complaint with the U.S. Department of Labor or may bring a private lawsuit against the College.

FMLA does not affect any Federal or State law prohibiting discrimination or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

V. SHORT-TERM DISABILITY (DL) LEAVE

Mercy College provides benefits and partial compensation for eligible employees who are unable to work for qualified health reasons unrelated to workers compensation.

Employees typically use accrued health and personal leave (if available) to cover lost wages for the first seven (7) calendar days of a disability-related absence. After the seven (7) calendar day waiting period, employees receive 50% of their base pay (or \$170—the lesser amount) for the time they are medically approved as disabled from work, up to a maximum of 26 weeks in any 52 week period (or approximately six (6) months) and they are entitled to the same position or substantially the same position as when they went out on the leave.

Eligible employees may use accrued sick leave, personal leave and/or vacation time to supplement the other 50% pay. The employee will also receive holiday pay for any holiday that falls during a period of approved disability.

Employees may choose to use these days together or return to work up to half-time, and receive 50% pay for the time not worked with agreement from the employee, his/her physician, the employee's supervisor, and the Office of Human Resources. Leave accruals may still be used to supplement this partial disability time. If an employee exhausts all of his/her DL benefits, he/she may be approved for long-term disability.

As noted above, however, DL and PFL benefits may not be used concurrently.

A. Eligibility

To be eligible for this benefit, employees must:

1. Be employed for at least four (4) consecutive weeks by the College, or worked four (4) or more consecutive weeks elsewhere in New York and be re-employed with the College within four (4) weeks from the last day previously worked in New York.
2. Be absent from work for seven (7) consecutive calendar days.
3. Provide proper medical certification of disability from a licensed New York medical provider, both at the start of disability, and via periodic medical certification if the absence from work is lengthy. The College may seek independent medical verification of your disability as a condition of continuing your benefits.
4. Be a Regular full-time or Regular part-time College employee.
5. Not perform work for remuneration or profit elsewhere when the employee is disabled and receiving benefits from the College. Any outside employment requires the express written authorization from Mercy.
6. Part-time, non-benefits eligible employees (such as adjuncts) must meet the same criteria as above and the benefit is limited to the weekly rate as per current New York law.

B. Requests

Employees should first speak with their supervisor and the Office of Human Resources. Requests shall be made as follows:

1. Provide written notification: It is the employee's responsibility to present written notification to his/her supervisor certifying the employee is able to return to work after an absence of five (5) consecutive working days or more. Employees who cannot produce such notification cannot be allowed to return to work.
2. Complete the DB-450 form: If an employee is absent for more than seven (7) calendar days, he/she must have a DB-450 form completed by his/her doctor. If the employee sees

more than one physician, a DB-450 must be filed for each doctor he/she sees during the period of disability. The carrier, who administers the leave, will send the employee this form automatically. The carrier treats this information confidentially. Under no circumstances will this information be released to the employee's department.

3. Submit all other forms: Claim forms and information will be sent to the employee's home. It is his/her responsibility to promptly complete and submit all forms received from the carrier. The employee is required to provide continuing medical reports of the disability when required by the carrier.
4. Returning: Once the disability has ended, the employee must be medically certified to return to his/her job. This will require the employee to present a medical note from his/her physician to the Office of Human Resources that the employee is able to resume their job. This note must be presented either before the employee returns or on the day of his/her return. The College may seek independent medical verification of the employee's ability to return to work.
5. If the employee becomes disabled as a result of the same illness or accident within three months of their return to work, disability benefits under this program will begin immediately.

VI. WORKERS' COMPENSATION

The College's Workers' Compensation program provides payments for medical treatment and wages lost as a result of a work-related illness or injury. All Employees are covered by Workers' Compensation.

A. Eligibility

If a physician considers an employee "disabled," the employee will continue to receive his/her regular salary during the first 13 weeks of disability. However, state law requires a seven (7) calendar day waiting period before workers' compensation goes into effect. During this waiting period, the employees' accumulated sick leave can be used. If he/she has no accumulated sick leave, he/she may use vacation time to assure continuation of full salary during this time. If the disability exceeds 14 calendar days, the sick leave or vacation time used during the first week will be returned to the employee.

A benefit-eligible employee's position, or an equivalent, is held for a combined total of 26 weeks of any medical leave (182 days) during any 12-month period. If the employee returns to full duty within this 26-week period, he/she is entitled to his/her job upon returning to work. Once this 26-week period has elapsed, the employee's department is no longer required to hold the employee's position, and it may be filled at the department's discretion.

Workers' Compensation has no limit on how long an employee receives a benefit. Therefore, the employee may receive Workers' Compensation for the first six months of leave, and then, if approved, long-term disability will begin. If you continue to receive Workers' Compensation after

LTD begins, the monthly benefit you receive from the LTD plan is reduced by the amount you are receiving in Workers' Compensation benefits.

B. Filing a Claim

If an employee experiences a work-related illness or work injury, he/she must notify their immediate supervisor as soon as possible, but within 30 days. To file a claim for benefits, complete an Accident Report Form paying particular attention to the nature of the injury, lost work time, and medical treatment administered.

C. Returning to Work

Once the disability has ended, the employee must be medically certified to return to the job. This will require the employee to present a medical note from his/her physician to the Office of Human Resources to resume their job. This note must be presented either before the employee returns or on the day the employee returns. The College may seek independent medical verification of the employee's ability to return to work.

VII. LONG-TERM DISABILITY LEAVE (LTD)

The College's Long-Term Disability Plan (administered by an outsourced carrier) provides an important financial safety net to eligible employees unable to work because of debilitating illness or injury.

Employees are enrolled in long-term disability coverage automatically.

LTD benefits continue as long as the employee remains disabled or until the maximum benefit period has been reached at their social security normal retirement age (SSNRA). For employees who are age 60 or over at the time the disability begins, the maximum benefit period is the later of the employee's SSNRA or 5 years from the date the employee became disabled.

The LTD plan pays a monthly benefit equal to 60% of the employees' regular monthly income at the time of disability and up to a maximum monthly benefit of \$20,000. The paid benefit is reduced by any amount of money the employee receives from the following:

- Workers' compensation
- Federal social security disability
- Retirement
- No-fault auto insurance lost wage benefits
- Employer salary continuation

VIII. OTHER LEAVES PURSUANT TO NEW YORK STATE, NEW YORK CITY AND WESTCHESTER COUNTY LAWS

A. Public Health Emergencies

Westchester County Local Law No. 10623-2018 and New York City Law A.C. Title 20, Chapter 8, permit employees who work more than 80 hours in a calendar year to use up to 56 hours per year of paid sick time for an employee (which time runs concurrent with paid sick leave in Section II above) in the following circumstances:

1. An employee's place of business, or child's day care, elementary or secondary school is closed due to a public health emergency; or
2. A public health authority determines the presence of an employee or family member in the community may jeopardize others' health because of the individual's exposure to a communicable disease, whether or not the individual has actually contracted the communicable disease.

B. COVID-19 Paid Sick Leave (a.k.a. "Quarantine Leave")

Under legislation signed by Governor Cuomo effective January 1, 2020, employees shall be provided with at least 14 days of paid sick leave while they or their minor dependent child are on a mandatory or precautionary order of quarantine or isolation⁴ issued by the State of New York, department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19 under the following conditions:

- Such leave shall be provided in addition to employee's accrued sick leave.
- Employees who traveled to a country that was at a level 2 or 3 health notice and who traveled to states considered "high risk" and require quarantine under NYS order, are precluded from receiving the leave (unless the travel was work-related).
- Upon returning to work following leave under this act, an employee shall be restored to their position that they held prior to the leave with the same pay and terms of conditions. Employees may also be eligible for additional leave under PFL and DL.

⁴ **Isolation**: is required when there is a confirmed infection, from of those who are not sick.
Quarantine: is required for individuals who, though not showing signs of the illness yet, have been exposed and need to see if they become sick.

- This provision shall not apply in cases where an employee is deemed asymptomatic or has not yet been diagnosed with any medical condition and is physically able to work while under mandatory quarantine or isolation, whether through remote access or otherwise.

C. Blood Donation Leave

Employees who work on average 20 hours or more per week are permitted the following unpaid leave (or paid personal or vacation time if accrued) under New York State Labor Law §202-j:

- Three (3) hours of leave in any 12-month period to donate blood off of the employer’s premises, or
- To donate blood during work hours at least twice each year at a convenient time and place set by the employer, which includes at a blood drive at the employee’s place of employment.

1. Notice

Employees are required to provide notice of their intent to take blood donation leave:

- Three days in advance if the leave is for off-premises blood donation, or
- Two days in advance if the leave is for blood donation at a convenient time and place set by the employer.

In the case of an emergency where an employee needs to donate blood for their own surgery or the surgery of a family member, the College must provide reasonable accommodations for a shorter notice period.

2. Certification – If an employee donates blood off premises, the College may require the employee to provide proof of blood donation.
3. Employee Rights – Leave for blood donation off of the College’s premises is unpaid, or the employee can use personal or vacation time. If the employee donates blood during work hours on the College’s premises, the time is paid.

D. Bone Marrow Donation Leave

Under New York State Labor Law §202-a, employees who work on average 20 hours or more per week may take unpaid leave (or paid personal or vacation time if accrued) in order to donate bone marrow as well as to recover from the procedure and for resulting medical care. The College may ask for medical documentation detailing the purpose and length of the requested bone marrow leave. An employee should provide at least 24 hours’ notice to an employer of a scheduled bone marrow donation and, in the case of an unscheduled bone marrow donation, as soon as possible upon receiving the request for donation.

E. Crime Victims Leave

Under New York State Penal Law § 215.14, employees who are victims of a crime or who are subpoenaed as a witness in a criminal proceeding are eligible for unpaid leave (or paid personal or vacation time if accrued).

1. Victims include:

- The aggrieved party;
- The aggrieved party's next of kin, if the aggrieved party died because of the crime.
- The victim's representative (for example, an attorney, guardian or parent of a minor);
- Good Samaritans; or
- Any person applying for or seeking to enforce an order of protection under the criminal procedure law or the family court act.

2. Employees are eligible for leave to:

- Appear as witnesses;
- Consult with the district attorney; or
- Exercise other rights under the law.

3. Notice

Employees who are crime victims or subpoenaed as a witness at a criminal proceeding must provide at least one day of notice to their employer before taking the leave.

4. Certification

The College may request proof that the employee attended or testified at a criminal proceeding.

F. Military Service Leave

Under New York State Military Law § 317, all non-temporary employees may be entitled to reemployment following military service.

1. Valid Leave Reasons – Employees are entitled to leave in order to fulfill their obligations to the armed forces, National Guard and military reserves. This includes participation in drills and other equivalent training, reserve training, instruction, annual full-time training duty, active duty for training or other annual training.

2. Certification – In order to obtain reemployment, the employee must provide a certificate of completion of military service executed by an officer of the applicable force of the organized militia. The employee must also still be qualified to perform the duties of their position and timely apply for reemployment.

3. Employee Rights – Employees must be reemployed, unless they were temporary employees, if, upon completion of military service the employee: (1) receives a certificate of completion of military service duly executed by an officer of the applicable force of the armed

forces of the United States or by an officer of the applicable force of the organized militia; (2) is still qualified for the duties of the position; and (3) applies for reinstatement within the appropriate time frame. However, the College need not reemploy the employee if the College's circumstances have so changed that it would be impossible or unreasonable to reinstate the employee.

Upon reemployment, the employee must be: (1) restored to their previous position or a position of similar seniority, status and pay; (2) restored to employment without any loss of seniority; (3) entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person entered the military service; and (4) protected from discharge, other than for cause, for one year after reemployment.

G. Military Spouse Leave

Under New York Labor Law §202-i, an employee who works on average 20 hours or more is entitled to take up to ten (10) days unpaid leave (or paid personal or vacation time if accrued) without advance notice or certification if he/she is the spouse of a member of the armed forces of the United States, the National Guard or military reserves who has been deployed during a period of military conflict to a combat theater or combat zone.

H. Non-Retaliation Under all Leave Laws

Mercy College is not permitted to engage in retaliation or threaten retaliation against an employee for exercising or attempting to exercise any right, or for filing a complaint or participating in an investigation, regarding their rights under any of the laws contained in this Policy.