

1332 Family Medical Leave

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I. Introduction

This Policy explains Stonehill College's compliance with the Federal Family and Medical Leave Act, 29 U.S.C. et seq. ("FMLA") and the Massachusetts Paid Family and Medical Leave Act, M.G.L. 175M and its implementing regulations 458 CMR 2.00 ("PFMLA") and the application and interaction of the FMLA and PFMLA with Stonehill College policies.

This Policy should at all times be interpreted consistent with the requirements of [Policy 1329 Vacation Time](#), and [Policy 1330 Sick Time](#). If there is a conflict between this Policy or any other Stonehill College policy and the FMLA or the PFMLA, this Policy shall always be interpreted consistent with the requirements of the FMLA and PFMLA to the extent necessary to ensure compliance with the law. The College's collective bargaining members are governed by certain Collective Bargaining Agreements ("CBA"). To the extent that the FMLA and PFMLA extend benefits and working conditions beyond those contained in a CBA, the FMLA and PFMLA shall apply. To the extent a CBA exceeds the requirements of the FMLA and PFMLA, the CBA shall apply.

To the full extent required under the law, this Policy shall at all times maintain a presumption in favor of the availability of leave and the payment of leave benefits for the covered employee.

Consistent with 29 CFR 825.701, nothing in the FMLA supersedes any provision of the PFMLA that provides greater family or medical leave rights than those provided by the FMLA. If an employee's absence qualifies for FMLA leave and PFMLA leave, the leave counts against the employee's entitlement under both laws. If the leave qualifies under PFMLA but not the FMLA, it does not count against the employee's FMLA entitlement. The Office of Human Resources shall notify employees at the time of a request as to whether PFMLA, FMLA, or both apply to their leave request. Consistent with the law, qualified leave under the PFMLA shall run concurrently with leave under the FMLA (if also qualified under the FMLA)

To the extent consistent with the PFMLA, all employees, including full-time, part-time, permanent, and temporary employees, shall be eligible for the benefits described in this Policy. Consistent with the law, benefits may be adjusted or prorated based on the employee's status and actual, eligible earned wages.

Stonehill College will not discriminate nor retaliate against any employee who exercises their rights under the FMLA or PFMLA. This Policy shall at all times be interpreted to grant covered employees the job protections they are entitled to under the FMLA and the PFMLA.

II. Employee Rights and Obligations

Under the FMLA and/or the PFMLA employees have the following rights and responsibilities:

1. Employees must provide notice of their need for leave to the Stonehill College Office of Human Resources.

- a. Such notice should comply with College policies for requests of time off or, for collective bargaining members, in compliance with the applicable CBA, unless emergency circumstances exist which make compliance impractical. Thirty days advance notice, whenever foreseeable, is expected.
 - b. Notice can be provided verbally or in writing (including by email from a Stonehill College email account). The Office of Human Resources will notify an employee if additional notice or documentation requirements are necessary.
 - c. The employee must provide enough information for the College to determine that the employee is requesting a leave under the law and, when possible, the employee should indicate how much leave is needed. The reason for the leave and the expected return to work date should be provided whenever possible.
 - d. Appropriate medical documentation is required for a leave based on a serious health condition. Such documentation should be provided within 15 days of the College's request for the documentation. All such documentation shall be retained by the Office of Human Resources consistent with the College's privacy, data security, and document retention policies. Failure to provide reasonable, sufficient documentation may result in a denial of a leave request.
 - e. The College may request reasonable recertification and medical documentation when necessary. The College reserves the right to request an independent medical evaluation at its own cost and may require a return to work evaluation by a physician of the College's choice to verify an employee's ability to perform their job.
2. Employees who are determined eligible for leave shall be provided a written notice informing them of their eligibility within five days of the complete request for leave. An employee who is determined ineligible for leave shall also be provided written notice which includes the reason why the employee is not eligible.
 3. An employee who has taken leave under this policy shall, on returning to employment at the close of a period of approved leave, be restored to the employee's previous position or to an equivalent position, with the same status, pay, employment benefits, length-of-service credit and seniority as of the date of leave. The College shall not be required to restore an employee who has taken said leave to the previous or to an equivalent position if other employees of equal length of service credit and status in the same or equivalent positions have been laid off due to economic conditions or other changes in operating conditions affecting employment during the period of leave; provided, however, that the employee who has taken leave shall retain any preferential consideration for another position to which the employee was entitled as of the date of leave. Failure to return from a leave upon the expiration of the applicable leave period, without approval for extension of leave or extension by operation of law, will be considered a voluntary resignation of employment. Consistent with the rights afforded employees herein, the College does retain the right to fill a position based on the operational needs of the College.
 4. The taking of leave under this Policy shall not affect an employee's right to accrue vacation time, sick leave, bonuses, advancement, seniority, length-of-service credit, or

other employment benefits. During the duration of an employee's leave, the College shall continue to provide for and contribute its share of the employee's employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of such leave. The employee will also be responsible for their regular active employee medical, dental and vision plan premiums and they will be deducted from their payroll while on paid leave. If the leave is unpaid, upon the employee's return any missed premiums will be double deducted until all missed premiums have been repaid. Employees should contact the Office of Human Resources if they have questions concerning procedures for payment of employee contributions.

III. Covered Employee

For the purposes of this policy under the PFMLA an eligible employee is an employee who meets the definition of "covered individual" under M.G.L. Chapter 175M, Section 1 (as further defined by M.G.L. Chapter 151A, Section 24) and under the FMLA is an employee who meets the definition of "eligible employee" under 29 CFR 825.110. The Office of Human Resources shall post and maintain a current copy of the definition in the Office of Human Resources.

IV. Circumstances that Qualify for Family and Medical Leave

A covered individual shall not take more than 26 weeks in the aggregate of family and medical leave in the same 12-month period (the benefit year). Consistent with the law, the 12-month period shall be measured going forward for 52 weeks from the Sunday immediately preceding the date that a covered individual first used the leave.

- A. Eligible employees may take up to 12 work weeks of leave in a 12-month period for the following qualifying reasons:
 - i. To bond with a child within the first year of birth, adoption, or foster care placement ("bonding leave").
 - a. Leave may be taken intermittently or on a reduced leave schedule, by agreement of the employee and the College, for leave to bond with a child during the first twelve months after the child's birth, adoption, or foster care placement.
 - b. Child shall include the definition presented in M.G.L. Chapter 175M, Section 1.
 - ii. Any qualifying exigency arising out of the fact that the employee's family member is a military member on covered active duty or call to covered active duty status.
 - a. Leave may be taken intermittently or on a reduced leave schedule by agreement of the employee and the College.
 - iii. To care for the employee's family member who has a serious health condition, including incapacity due to pregnancy or prenatal medical care.
 - iv. Any other circumstance which qualifies for leave under the FMLA or the PFMLA.
- B. Eligible employees, under the PFMLA, may take up to 20 work weeks of leave in a 12-month period for the following qualifying reasons (such leave may be taken intermittently or on a reduced leave schedule if medically necessary):

- i. A serious health condition that makes the employee unable to perform the functions of their job, including incapacity due to pregnancy, prenatal medical care, and recovery from childbirth.
 - a. A serious health condition is an illness, injury, impairment, or physical or mental condition that involves:
 - i. inpatient care in a hospital, hospice or residential medical facility; or
 - ii. continuing treatment by a health care provider.
- C. Eligible employees may take up to 26 workweeks of leave in a 12-month period for the following qualifying reasons (such leave may be taken intermittently or on a reduced leave schedule if medically necessary):
- i. To care for a covered service member (as defined by M.G.L. Chapter 175M, Section 1) with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

V. Definition of Eligible Family Members

Per M.G.L. c. 175M § 1 and 458 CMR 2.00 as currently drafted eligible Family Member for the purpose of this policy will be defined as the eligible employee's spouse, domestic partner, child, parent or parent of their spouse or domestic partner; a person who stood in loco parentis to the eligible employee when they were a minor child; or a grandchild, grandparent or sibling of the eligible employee.

VI. Pay While on an Approved Family and Medical Leave

1. Weekly Benefit Amount: An eligible employee on a qualifying leave will be paid a Weekly Benefit Amount to be calculated based on past earnings in compliance with the PFMLA as follows:
 - o The portion of the covered individual's average weekly wage that is equal to or less than 50 percent of the state average weekly wage shall be replaced at a rate of 80 percent; and
 - o The portion of the covered individual's average weekly wage that is more than 50 percent of the state average weekly wage shall be replaced at a rate of 50 percent.
 - o For purposes of this calculation, an eligible employee's average weekly wage shall include only those wages or payments subject to the contribution requirements explained in M.G.L. 175M, Section 6.
 - o Consistent with the PFMLA, the weekly benefit amount may be reduced based on other applicable wage replacement benefits being received by the employee.
 - o For an eligible employee who takes leave on an intermittent or reduced leave schedule, the weekly benefit amount shall be prorated.
 - o The maximum weekly benefit amount will be updated each year to comply with the new rate set by the Massachusetts Department of Family and Medical Leave

("the Department"). An eligible employee's Weekly Benefit Amount is never to exceed the maximum determined by the Department.

- o In the event the Department updates the method for calculating the Weekly Benefit Amount, the College will align its policy and practice to comply with the Department's calculation.
 - o The Department's benefits calculator can provide employees with an estimated Weekly Benefit Amount based on actual earnings.
 - o No leave benefits shall be payable during the first 7 calendar days of such leave; provided, however, that a covered employee may utilize accrued sick or vacation time or other earned time.
2. Use of Accrued Time Off: Eligible employees may elect to use accrued sick or vacation time to compensate for any difference between their Weekly Benefit Amount and their actual weekly pay, payable until their leave ends or accrued sick or vacation time is exhausted.
 3. Pay During Bonding Leave: Within the first year of the birth, adoption or foster care placement of a child, an eligible employee who has been employed at Stonehill full time for three consecutive months at the start of the leave will be eligible for 8 weeks of leave at 100% of their regular salary without the use of the Weekly Benefit Amount or accrued sick or vacation time. Any additional Bonding Leave will be paid as described in Sections VI.1-2 above.

VII. Parental Leave

Generally, parental leave may be taken as follows:

Medical Leave: In accordance with the PFMLA, an eligible employee who is pregnant or has given birth may take job protected medical leave for a documented serious health condition related to pregnancy or childbirth that makes the employee unable to perform the functions of their job. This includes time to recover from childbirth, which is determined by an employee's medical provider but is typically 6-8 weeks. Medical leave must not exceed 20 weeks in a benefit year. Medical leave must be documented by an employee's medical provider.

Bonding Leave: An eligible employee is eligible for up to 12 weeks of leave to bond with a child within the first year of birth, adoption, or foster care placement. Bonding leave may be taken continuously for up to 12 weeks, or intermittently within the first year of birth, adoption, or foster care placement. Bonding leave is available to both birthing and non-birthing parents.

An eligible employee who takes medical leave for pregnancy or to recover from childbirth is also eligible for up to 12 weeks of bonding leave. An eligible employee's total leave must not exceed 26 weeks of leave in a benefit year.

VIII. Appeals Process and Employee Notifications

Human Resources shall publish in a conspicuous place in the Office of Human Resources a notice to employees of their right to an appeal process consistent with the requirements of 458 CMR 2.07(2)(c) which shall specifically inform all employees of the employees right to file an appeal with the plan administrator prior to filing an appeal pursuant to 458 CMR 2.07(6)(a) and 458 CMR 2.14 and specifically stating that the appeals process shall not require the employee

to submit an appeal less than ten calendar days from the receipt of notice of any determination and that the appeals process allows for the extension of the ten calendar-day filing period where an individual establishes that circumstances beyond the individual's control prevented the filing of a request for an appeal within the prescribed ten-day filing period.

Human Resources shall also ensure that employees receive notice of their rights as part of any adverse determination as well as the rights afforded the employee or covered contract worker pursuant to M.G.L. c. 175M, and 458 CMR 2.00; and for purposes of determining the benefit amount and notice that the leave allotment, the weekly benefit amount, and leave allotment shall be based on the covered individual's average working week in addition to the wages or qualified earnings earned at the time of an application for benefits, to the extent required under the law.

IX. Surety Bond

The Office of the Controller shall ensure that it files each year a surety bond with the Commonwealth of Massachusetts as obligee in such form and amount as required by law issued by a surety company authorized to transact business in Massachusetts.

X. Working while on Medical Leave or Parental Leave

Stonehill recognizes that the purpose of medical and parental leave is to care for yourself and your family, and we strongly encourage employees to refrain from working while on a leave. Moreover, your supervisor is not permitted to ask or demand that you work while on a leave (with the exception of minor tasks such as but not limited to providing a password or locating a file). However, a faculty member who becomes eligible for tenure or promotion while on leave may voluntarily choose to participate in that process, which may require a substantial workload, in accordance with the following policies:

- a. Leave due to an employee's own serious health condition: A faculty member on a medical leave for their own serious health condition may be allowed to apply for tenure and/or promotion while on medical leave if their medical provider feels that it would not negatively impact the health, healing, or well-being of the faculty member on leave. Stonehill may require a release from the faculty member's medical provider before allowing said faculty member to participate in the tenure or promotion process due to the workload required and concern for the faculty's ability to focus on their wellbeing and recovery. If such release is requested, the release and the circumstances of the leave will be reviewed by the Assistant Vice President of Human Resources who will determine if participation in the tenure and/ or promotion process is possible.
- b. Parental leave or leave to care for a family member with a serious health condition: These circumstances may warrant more flexibility and Stonehill may allow application for tenure and/ or promotion when a faculty member is unable to come into the workplace but may have periods of time where he or she is able to perform work while on parental leave or leave to care for a family member.
- c. Faculty members who anticipate that their leave will overlap with their tenure and/ or promotion eligibility and wish to participate while on leave should ensure their medical leave documentation does not inadvertently bar them from participation in the tenure and/ or promotion process.

- d. An expedited tenure or promotion process may be available to a faculty member who was unable to participate at the time of eligibility due to a medical or parental leave. This determination will be made on a case-by-case basis by the Rank & Tenure Committee.