FAMILY AND MEDICAL LEAVE POLICY AND PROCEDURE

PURPOSE: The Family and Medical Leave Act of 1993 (FMLA) allows an eligible employee up to 12 weeks of leave in a 12-month period for a qualifying reason(s). In addition to the leave provided under the FMLA as outlined below, an employee may also be entitled to other leave under state law or State Board for Community and Technical Colleges (SBCTC) policies, including the Service Member Family Leave policy. This policy applies to all employees of SBCTC.

The Director of Human Resources is responsible for ensuring leave is administered in good faith and consistent with the rights and responsibilities provided by statute, specifically the Family Medical Leave Act of 1993 (FMLA) and WAC 357-31 and WAC 296-130, and for providing information and training specific to these rights and responsibilities.

Managers are responsible for managing their staff’s leaves and keeping both the employee and the Human Resources Office informed of changes in status, rights and need for information. Additionally, managers are responsible for ensuring that no employee returns to work without first confirming with the Human Resources Office that appropriate medical release is on file.

Employees are responsible for reporting leaves and providing the notice and information necessary for Bates Technical College to effectively administrate this procedure and direct its workforce.

DEFINITIONS: The following definitions are specific to the terms of this procedure and do not modify or revise similar terms as used in related procedures.

Active Duty: Duty under a call to order to active duty under a provision of federal law referred to in Section 101(a)(13)(B) of Title 10, U.S.C. Sec. 101(14).

Contingency Operations: This term means a military operation that:
   a. 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
   b. Results in a call or order, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305 or 12406 of Title 10, chapter 15 of this title, or any other provision of law during a war or during a national emergency declared by the President or Congress.

Employment Benefits: All benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an "employee benefit plan."

Exigency: The state or quality of requiring much effort or immediate action – a pressing or urgent situation.

Family Member: Under this procedure, family member generally includes children, spouse, parents, and grandparents but not son-in-law, daughter-in-law, parents-in-law, or grandparents-
FMLA Policy
Page 2

in-law. For Exigency Leave, however, “Family Member” means spouse, child or parent of an eligible employee. Exigency leave benefits are for family members of active duty service members.

Health Care Provider: A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or, any other person determined by the Secretary to be capable of providing health care services.

In loco parentis: Persons with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

Parent/Grandparent: A biological parent/grandparent or an individual who stands or stood in loco parentis to an employee or employee’s spouse when the employee/spouse was a child.

Secretary: The Secretary of the federal Department of Labor.

Serious Health Condition: An illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, or continuing treatment by a health care provider.

Son or Daughter: A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

Spouse: A husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

Reduced Leave Schedule: A leave schedule that reduces the usual number of hours (per workweek, or hours per workday) of an employee.

Rolling Year: A period of twelve calendar months beginning with the qualifying event.

GENERAL PROVISIONS: Bates Technical College will grant up to 12 weeks of FMLA leave during a rolling year (beginning with the qualifying event) to eligible employees, in accordance with this procedure, for one or more of the following reasons:

- The birth and care of a newborn child;
- The placement and care of a adopted child or foster child with the eligible employee;
- To care for an employee’s family member with a serious health condition; or
- The employee’s own serious health condition.
- Due to qualifying exigency arising from the fact that a spouse, child or parent of an eligible employee is on active duty or has been notified of pending call to active duty in the Armed Forces in support of a contingency operation.

Entitlement to FMLA leave for the care of a newborn child or newly adopted or foster child ends twelve months from the date of the birth or the placement respectively.
ELIGIBILITY: To be eligible for FMLA leave, an employee must meet all of the following conditions:

- The employee must have worked for Bates Technical College for at least 12 months (need not be consecutive) prior to the commencement of the leave;
- The employee must have worked for at least 1,250 hours of service in the 12-month period immediately preceding the commencement of the leave; and
- The employee must have worked at a work site which employs at least 50 employees within a 75 mile radius.

The 1,250 hours requirement does not count used paid time off (i.e., annual leave, sick leave, personal holiday, compensatory time, or shared leave). The 1,250 hours worked rule can otherwise be described as, “in the seat time”.

LEAVE COVERAGE AND 12-MONTH PERIOD:

Measuring the 12-month period: An eligible employee can take up to 12 weeks of FMLA leave during a 12-month rolling year period (beginning with the qualifying event and ending 12 months later).

Both Spouses Employed by Bates Technical College: If a husband and wife both work for the college, they may only take a combined total of 12 weeks of FMLA leave in the 12-month period for the purpose of the birth and care of a child, adoption of a child, or placement of a child in foster care, or to care for the employee’s parent with a serious health condition.

Accounting for Leave: Use of leave will normally be accounted for on an hourly basis. A full-time employee would thus be entitled to 480 hours of FMLA leave during the 12-month period.

Additional Leave for Disability Related to Pregnancy and Child Care: Washington state law, RCW 49.78 (2) and 49.78.030 (4) states:

“This family leave required by U.S.C. 29.2612 (a) (1) (A) and (B) of the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) shall be in addition to any leave for sickness or temporary disability because of pregnancy or childbirth.”

If a prospective mother experiences a disabling condition relating to pregnancy or childbirth, she is entitled to an additional 12 weeks of leave under RCW. However, leave used for pregnancy related illness would impact the balance available and could make FMLA unavailable until the next FMLA year.

Military Family Leave Entitlements for eligible specified family members of active duty service members:

(1) Up to 12 weeks of leave for certain qualifying exigencies arising out of a covered service member's active duty status, or notification of an impending call or order to active duty status, in support of a contingency operation or deployed to a foreign country, and

(2) Up to 26 weeks of leave in a single 12-month period to care for a covered service member recovering from a serious injury or illness incurred in the line of duty on
active duty. This includes veterans who are undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment. Eligible employees are entitled to a combined total of up to 26 weeks of all types of FMLA leave during the single 12-month period.

EMPLOYEE REQUEST FOR LEAVE AND EMPLOYER DESIGNATION: It is the employee's responsibility to notify his/her supervisor and Human Resources of the need for leave. The supervisor, after having been informed of the need, shall inform the employee to contact the human resources office for the official notification paperwork and/or may notify the human resources office directly. Employee notification will occur through the completion of the FMLA Leave Notification form available from Human Resources. A Medical Certification form will also be required. A written request (notification form) must be signed by the employee. Once a FMLA request has been made, Human Resources will determine eligibility and notify the employee of either the:

- Approval of leave and whether the leave will be designated as FMLA, or;
- Denial of leave and the reason for the denial.

The employee will be notified of the above determination either orally or in writing. If given orally, the determination will be followed up in writing, within two business days, absent extenuating circumstances. If the employee does not provide enough information to determine if the leave qualifies for FMLA, the Director of Human Resources or designee will require additional information.

FMLA designation is the sole responsibility of the Director of Human Resources or designee and may occur without receipt of a request but based on the situation.

If the need for leave is foreseeable, the employee must notify his or her supervisor and Human Resources in advance of the need for leave, at least 30 days in advance if possible. If the need for leave is not foreseeable or a 30 day notice is not possible, notice must be given as soon as possible.

When medical certification is required, the employee must return the completed medical certification form within 15 calendar days of notification to the employer. The employee should return the medical certification to the Human Resource Representative, not to the supervisor. If the medical certification is not returned, the leave may be denied due to lack of verifiable information.

It is the employee’s responsibility to ensure the medical certification is returned to the Human Resources Office. If the employee returns the ‘Medical Certification’ to the supervisor, the supervisor must send the certification directly to the Human Resources Office.

Due to employee and patient privacy laws, the medical certification and all other related medical information, must be returned directly to and maintained in the Human Resources Office.

INTERMITTENT LEAVE: Bates Technical College seeks to accommodate employees with need for leave while also keeping them productive and orientated to the workplace. As related to FMLA, Bates’ will consider the possibility of the following temporary options:

- An intermittent schedule (i.e. day on, day off).
A reduced hours schedule (i.e. fewer days or hours per week).
A flexible schedule (i.e. adjusted work hours).
Transfer temporarily to a position better suited to need or limitations. An employee will maintain his/her current pay and, the reassignment is noncompetitive and limited to lateral or lower level assignments.

For certain situations, Bates’ can transfer an employee temporarily, at the employee's current pay, to a position that would accommodate a leave of absence or work restriction that could not be accommodated within their current position. FMLA does not require an employer to promote or create a position as a form of accommodation.

If the need for FMLA is due to the employee’s own serious health condition or to care for a family member with a serious health condition, a ‘Medical Certification’ must be completed even if a leave on an intermittent basis or leave on a reduced schedule is being requested. The ‘Medical Certification’ may need to be re-certified periodically to establish on-going need, re-verify condition or communicate changes in prognosis.

In the event of foreseeable medical treatment, employees must work with their department to schedule the leave, subject to the approval of the health care provider, so as not to unduly disrupt the department’s or Bates’ operations; including when the leave will be intermittent or reduced schedule.

Bates’ allows, where appropriate, leave on an intermittent basis for the care of a newborn child or a foster or adopted child. Granting of intermittent leave for this purpose is discretionary and will be determined on a case-by-case basis. If such leave is granted, the employee and Bates’ must mutually agree to the work schedule and duration. An updated schedule is also encouraged.

Intermittent leave arrangements must serve the mutual convenience of the college and the employee. Should such arrangement no longer serve the mutual convenience of either party it will be terminated with reasonable notice and a new leave arrangement may be determined.

**SUBSTITUTION OF PAID LEAVE/CONCURRENT LEAVES:** It is the general policy of Bates Technical College that FMLA will run concurrently with all other forms of leave. Bates’ will require an employee to substitute paid sick leave for an otherwise unpaid FMLA leave and when sick leave is exhausted then the employee will use vacation leave and personal leave in the order herein stated. The use of any leave, paid or unpaid (excluding compensatory time earned under the Fair Labor Standards Act), for a FMLA qualifying event will run concurrently with, and not in addition to, the use of FMLA for that event. The types of leave that can be used for FMLA include annual/sick leave, vacation leave, compensatory time, and personal leave.

A leave of absence covered by worker’s compensation will also run concurrently with FMLA.

Compensatory time earned pursuant to the Fair Labor Standards Act will not be counted toward the FMLA entitlement, although an employee is allowed to use compensatory time for a FMLA qualifying event.

**MEDICAL CERTIFICATION:** When an employee requests FMLA that will exceed three (3) days or for a qualified intermittent reason for his/her own serious health condition or to care for a
family member with a serious health condition a ‘Medical Certification’ will be requested. The medical certification for the specific condition may need to be re-certified periodically, at Bates’ request, to ensure accuracy of approvals.

After Human Resources receive a FMLA request or are notified of a qualifying FMLA event, the employee will be asked to complete a FMLA notification form and a ‘Medical Certification’ (unless one is on file for the specific condition). The certification must be completed within 15 calendar days of receipt and returned to the Human Resource Office. Failure to provide the requested certification may result in the denial of or discontinuation of a leave. An extension may be provided based on a reasonable explanation for the delay (e.g. reasons outside the employee’s control such as treating physician is out of the office, the first available appointment is 16 calendar days from the time of receiving the form, etc.).

To ensure a timely and accurate assessment of a leave request, the ‘Medical Certification’ should be complete and all applicable information should be included. If Human Resources have questions regarding the initial certification, Human Resources may return the ‘Medical Certification’ to the employee with direction to have the health care professional clarify information in the original certification.

If Human Resources have reason to question the medical certification, Human Resources may, at its sole discretion, seek a second opinion from a health care provider of its choosing and expense. If the second opinion conflicts with the first opinion, a third opinion may be obtained at the college’s expense from a health care provider mutually chosen by the employee and Bates’. The third opinion will be controlling. The employee will be considered provisionally entitled to leave pending the second and/or third opinion. If the third opinion determines the medical condition does not qualify as FMLA, the employee will be required to use leave without pay.

In certain circumstances, Human Resources can ask the employee for re-certification of his or her family member's medical condition at the employee’s expense. A request for re-certification will not be made more frequently than once every 30 days and only in connection with the employee’s absence. If the duration of incapacity specified by the health care provider is longer than 30 days, Human Resources will not request the certification until that minimum duration has passed. Human Resources can request more frequent recertification if the circumstances described in the previous certification have changed significantly or if Human Resources receive information that raises questions about the absence.

CONTINUATION OF BENEFITS: During approved FMLA leave, the college will continue an eligible employee’s health and other benefits at the same level and under the same conditions as if the employee had continued to work. The eligible employee will continue to be responsible for paying for his/her portion of health care and other benefit premiums, if applicable during their FMLA absence.

During paid leave, Bates’ will continue to make payroll deductions for the employee’s share of the health care and other premiums. During unpaid leave, the employee must continue to make these payments. Payment should be made to Bates Technical College and sent to the Human Resources Office for initial processing.

RETURNING TO WORK: Prior to returning to work from a medical leave, the employee will be required to provide a ‘fitness for duty certification, also known as a ‘doctor’s release’ from a health care provider. The ‘fitness for duty’ certification must be job related and consistent with
business necessity. A ‘fitness for duty’ certification will not be required after an intermittent leave unless the intermittent leave is due to the employee’s own medical condition. This statement is to be delivered to the Human Resource Office during regular business hours by the employee prior to returning to the workplace.

When an employee returns to work from an approved FMLA event, the employee shall be returned to the same or an equivalent position, benefits, conditions of employment as if the employee had been continuously employed during the leave period.

If the employee’s doctor believes the employee may return to work but with limitations/restrictions, the limitations/restrictions must be noted with expected duration of the restrictions. When an employee returns to work with such restrictions, temporary modified duties must be written out, reviewed, and signed by supervisor and employee to ensure that the employee as well as the supervisor is aware of the temporary accommodations. This form is then to be delivered to the Human Resource Office for review and approval to ensure the temporary modified duties do not violate the doctor’s restrictions or any applicable law, rule or regulation. In cases of continued medical treatment, the employee is asked to make a reasonable effort to schedule the treatment so as not to unduly disrupt the department’s operations.

The duties identified on the modified duty agreement interpret current doctor’s recommendations and an employee’s restrictions may change or need to be modified as recommendations change.

Human Resources may require the employee to bring an updated doctor’s note with the new restrictions. When the updated doctor’s note is received a new modified duty agreement should be developed, signed by both the employee and the supervisor and sent to the Human Resource Office for review and approval.

**LEAVE ABUSE:** An employee on a FMLA leave must be out for the reason of the leave and may not receive compensation from another entity or conduct business other than the reason for the leave. An employee who fraudulently obtains FMLA leave is not protected by the FMLA’s job restoration or maintenance of health benefits provisions and may be subject to appropriate disciplinary action up to and including termination. Please contact the Human Resources Office for further guidance if you believe an employee is abusing their FMLA entitlement.