

## Equal Employment Opportunity

Equal employment opportunity ~~and treatment~~ will be practiced by the College regardless of **the perceived or actual** race, color, national **or ethnic** origin, religion, sex, ~~actual or perceived~~ sexual orientation, ~~actual or perceived~~ gender identity, marital status, age, **hair texture and style, mental** disability, **physical disability, pregnancy, childbirth or related medical condition,** genetic information, **familial status, economic status,** veterans' status, **service in uniformed service, and individual's expunged juvenile record,** if the employee, with or without reasonable accommodation, is able to perform the essential functions of the position.

The President will appoint an employee to serve as the officer in charge of compliance with the Americans with Disabilities Act of 1990, **and** the Americans with Disabilities Act Amendments Act of 2008 (ADA), and Section 504 of the Rehabilitation Act of 1973. The President will also designate a Title IX coordinator to comply with the requirements of Title IX of the Education Amendments of 1972. The Title IX coordinator will ensure complaints communicated to the College alleging noncompliance with Title IX are investigated in accordance with federal and state law(s). The name, address and telephone number of the Title IX coordinator will be provided to all students and employees.

END OF POLICY

---

### Legal Reference(s):

[ORS 174.100\(7\)](#)  
[ORS 243.317 – 243.323](#)  
[ORS 408.225](#)  
[ORS 408.230](#)  
[ORS 408.235](#)  
[ORS 652.210 - 652.220](#)  
[ORS 659.850](#)  
[ORS 659.870](#)  
**ORS 659A.001**  
[ORS 659A.003](#)  
[ORS 659A.006](#)

[ORS 659A.009](#)  
[ORS 659A.029](#)  
[ORS 659A.030](#)  
[ORS 659A.040](#)  
[ORS 659A.082](#)  
**ORS 659A.106**  
[ORS 659A.109](#)  
[ORS 659A.112](#)  
[ORS 659A.147](#)  
[ORS 659A.233](#)  
[ORS 659A.236](#)

[ORS 659A.300](#)  
[ORS 659A.309](#)  
[ORS 659A.321](#)  
[ORS 659A.409](#)  
[ORS 659A.820](#)  
  
[OAR 715-011-0005 – 011-0085](#)  
[OAR 839-003-0000](#)  
[OAR 839-006-0435 - 006-0465](#)

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2012).

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et. seq. (2012).

Age Discrimination Act of 1975, 42 U.S.C. §§ 6101-6107 (2012).

Age Discrimination in Employment Act of 1965, 29 U.S.C. §§ 621-633 (2012); 29 C.F.R. Part 1626 (2019).

Equal Pay Act of 1963, 29 U.S.C. § 206(d) (2012).

Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff-1 (2012).

Rehabilitation Act of 1973, 29 U.S.C. §§ 791, 794 (2018).

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1683, 1701, 1703-1705, 1720 (2018).

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2019).

Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12112 (2012); 29 C.F.R. Part 1630 (2019); 28 C.F.R. Part 35 (2019).

Americans with Disabilities Act Amendments Act of 2008, 42 U.S.C. §§ 12101-12133 (2012).

Vietnam Era Veterans' Readjustment Assistance Act of 1974, 38 U.S.C. § 4212 (2018). Chevron

USA Inc. v. Echazabal, 536 U.S. 736 (2002).

Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4303 (2018).

**Cross Reference(s):**

AC - Nondiscrimination

ACA - Americans with Disabilities Act

## Veterans' Preference

Oregon's veterans' preference law requires the College to grant a preference to qualified and eligible veterans and disabled veterans at each stage in the hiring and promotion process. To be qualified for veterans' preference, a veteran or disabled veteran must meet the minimum and any other special qualifications required for the position sought. To be eligible for veterans' preference a veteran or disabled veteran must provide certification they are a veteran or disabled veteran as defined by Oregon law.

The College is not obligated to hire or promote a qualified and eligible veteran or disabled veteran. The College is obligated to interview all minimally qualified veterans or disabled veterans and to hire or promote a qualified or eligible veteran or disabled veteran if the individual is equal to or better than the top candidate after the veterans' preference has been applied.

A veteran may submit a written request to the College for an explanation of the reasons why they were not selected for the position. The College shall provide the reasons for not selecting the candidate when requested.

### Filing a Complaint

A veteran or disabled veteran is encouraged to contact human resources if they have any concerns or questions concerning the application of or the process used for veterans' preference.

A veteran or disabled veteran claiming to be aggrieved by a violation of Board policy GBA - Equal Employment Opportunity or this administrative regulation, may file a written complaint with the Civil Rights Division of the Bureau of Labor and Industries (BOLI) in accordance with Oregon Revised Statute (ORS) 659A.820.

### Legal Reference(s):

[ORS 408.225](#)

[OAR 839-006-0440](#)

[ORS 408.235](#)

[ORS 659A.820](#)

# Clackamas Community College

Code: GBC  
Adopted: 12/14/11  
Revised/Readopted: 7/30/14; 5/09/18

## Staff Ethics

### I. Conflict of Interest Prohibited Use of Official Position for Financial Gain

**College employees are prohibited from attempting to or using their position at the College to obtain personal financial gain or benefit or for the avoidance of financial detriment or financial gain or avoidance of financial detriment for themselves, relatives, household members, or for any business with which the employee, household members or relatives are associated if the financial gain or avoidance of financial detriment would not otherwise be available except for the College employee's employment with the College.**

This prohibition does not apply to any part of an official compensation package, **including College logo apparel received as part of an official compensation package,** honorarium allowed by Oregon Revised Statute (ORS) 244.042, reimbursement of expenses, or unsolicited awards of professional achievement. Further, this prohibition does not apply to gifts from one without a legislative or administrative interest. Nor does it apply if the gift is under the \$50 gift limit for one who has a legislative or administrative interest in any matter subject to the decision or vote of the College employee.

College employees **will may** not engage in, or have a **personal** financial interest in, any activity that raises a reasonable question of conflict of interest **regarding the use of their official position in regards to their duties and responsibilities as College employees** with their duties and responsibilities as staff members. **This also applies to any personal business with which the College employee, household members or relatives of the College employee are associated.** This means that:

1. **An employee will may** not use his/her **their** position to obtain financial gain or **to** avoidance of financial detriment from students, parents or staff;
2. Any device, publication or any other item developed during the employee's paid time shall be College property **except as established under the terms of an employee handbook or a collective bargaining agreement;**
3. **An employee will may** not personally benefit from the use of confidential information gained in the course of or by reason of the employee's position or activities;
4. No College employee may serve as a Board or budget committee member **in of** the College;
5. **An employee will may** not perform any duties related to an outside job during their regular working hours or during the additional time that they need to fulfill the position's responsibilities; nor **will may** an employee use any College facilities, equipment or materials in performing outside work;

6. If an employee authorizes a public contract, the employee may not have a direct beneficial financial interest in that public contract for two years after the date the contract was authorized.

If an employee has a potential or actual conflict of interest, the employee must notify their supervisor, in writing, of the nature of the conflict and request that the supervisor appropriately disposes of the matter giving rise to the conflict.

## II. Nepotism

In order to avoid both potential and actual conflicts of interests, College employees must abide by the following rules when an employee's relative or ~~member of household~~ **member** is seeking **employment** and/or holds a position with the College:

1. A College employee may not appoint, employ, promote, discharge, fire, or demote or advocate for such an employment decision for a relative unless they comply with the conflict of interest requirements of ORS Chapter 244. This rule does not apply to employment decisions regarding unpaid volunteer positions, unless it is a Board-related position;
2. A College employee may not participate as a public official in any interview, discussion, or debate regarding the appointment, employment, promotion, discharge, firing, or demotion of a relative or member of the household. An employee may still serve as a reference, provide a recommendation, or perform other acts that are part of the normal job functions of the employee;
3. More than one member of an employee's family may be hired as a regular College employee. In accordance with Oregon law, however, the College may refuse to hire individuals, or may transfer current employees, in situations where an appointment would place one family member in a position of exercising supervisory, appointment or grievance adjustment authority over another member of the same family.

~~In the *conflict of interest* context:~~

~~“Member of household” means any person who resides with the employee.~~

~~“Relative” means: the spouse<sup>1</sup>, parent, step-parent, child, sibling, step-sibling, son-in-law or daughter-in-law of the employee; or the parent, step-parent, child, sibling, step-sibling, son-in-law or daughter-in-law of the spouse of the employee. Relative also includes any individual for whom the employee has a legal support obligation, whose employment provides benefits<sup>2</sup> to the employee, or who receives any benefit from the employee's public employment.~~

## III. Gifts

College employees must comply with the following rules involving gifts:

---

<sup>1</sup>The term spouse includes domestic partner.

<sup>2</sup>Examples of benefits may include, but not be limited to, elements of an official compensation package including benefits such as insurance, tuition or retirement allotments.

Employees are public officials and therefore ~~will~~ **may** not solicit or accept a gift or gifts with an aggregate value in excess of \$50 from any single source in a calendar year that has a legislative or administrative interest in any matter subject to the decision or vote of the College employee. All gift related provisions apply to the employee, their relatives, and members of ~~the~~ **their** household. The \$50 gift limit applies separately to the employee, and to ~~the employee's~~ **their** relatives or members of **their** household, meaning that the employee and each member of their household and **each** relative **can** ~~may~~ accept up to \$50 each from the same source/gift giver.

A **Employees may receive** gifts ~~may be received by the College employee from, but not limited to,~~ another College employees, a student, or a vendor **if that gift or gifts do not exceed a total value of \$50 in a calendar year**. Except for exclusions in ORS 244.040(2), an item received by the employee from the College is prohibited. **This limitation does not apply to exclusions outlined in ORS 244.040 (2).**

~~“Gift” means something of economic value given to an employee without valuable consideration of equivalent value, which is not extended to others who are not public officials on the same terms and conditions.~~

~~“Relative” means: the spouse<sup>3</sup>, parent, step-parent, child, sibling, step-sibling, son-in-law or daughter-in-law of the employee; or the parent, step-parent, child, sibling, step-sibling, son-in-law or daughter-in-law of the spouse of the employee. Relative also includes any individual for whom the employee has a legal support obligation, whose employment provides benefits<sup>4</sup> to the employee, or who receives any benefit from the employee’s public employment.~~

~~“Member of the household” means any person who resides with the employee.~~

### **Determining the Source of Gifts**

Employees, **their relatives and members of their household**, should not accept gifts in any amount without obtaining information from the gift giver as to ~~who is~~ the source of the gift. It is the employee's personal responsibility to ensure that no single source provides gifts exceeding an aggregate value of \$50 in a calendar year, if the source has a legislative or administrative interest in any matter subject to the decision or vote of the College employee. If the giver does not have a legislative **or** administrative interest, **the \$50 limit does** ~~the ethics rules on gifts do~~ not apply and the employee need not keep track of it, although they are advised to do so anyway in case of a later dispute.

### **Determining Legislative and Administrative Interest**

A “legislative or administrative interest”<sup>2</sup> means an economic interest distinct from that of the general public, in any action subject to the official decision of an employee.

A “decision”<sup>2</sup> means an act that commits the College to a particular course of action within the employee’s scope of authority and that is connected to the source of the gift’s economic interest. A decision is not a

---

<sup>3</sup> Ibid. p. 2

<sup>4</sup> Ibid. p. 2

recommendation or work performed in an advisory capacity. If a supervisor delegates the decision to a subordinate but retains responsibility as the final decision maker, both the subordinate and supervisor's actions would be considered a "decision."

### **Determining the Value of Gifts**

The fair market value of the merchandise, goods or services received will be used to determine benefit or value.

~~"Fair market value" is the dollar amount goods or services would bring if offered for sale by a person who desired, but was not obligated, to sell and purchased by one who is willing, but not obligated, to buy.~~ Any portion of the price that was donated to charity, however, does not count toward the fair market value of the gift if the employee does not claim the charitable contribution on personal tax returns. Below are acceptable ways to calculate the fair market value of a gift:

1. In calculating the per person cost at receptions or meals the payer of the employee's admission or meal will include all costs except any amount donated to a charity.

For example, a person with a legislative or administrative interest buys a table for a charitable dinner at \$100 per person. If the cost of the meal was \$25 and the amount donated to charity was \$75, the benefit conferred on the employee is \$25. This example requires that the employee does not claim the charitable contribution on personal tax returns.

2. For receptions and meals with multiple attendees, but with no price established to attend, the source of the employee's meal or reception will use reasonable methods to determine the per-person value or benefit conferred. The following examples are deemed reasonable methods of calculating value or benefit conferred:
  - a. The source divides the amount spent on food, beverage and other costs (other than charitable contributions) by the number of persons whom the payer reasonably expects to attend the reception or dinner;
  - b. The source divides the amount spent on food, beverage and other costs (other than charitable contributions) by the number of persons who actually attend the reception or dinner; or
  - c. The source calculates the actual amount spent on the employee.
3. Upon request by the employee, the source will give notice of the value of the merchandise, good, or services received.
4. Attendance at receptions where the food or beverage is provided as an incidental part of the reception is permitted without regard to the fair market value of the food and beverage provided.

### **Value of Unsolicited Tokens or Awards: Resale Value**

Employees may accept unsolicited tokens or awards that are engraved or are otherwise personalized ~~items~~. Such items are deemed to have a resale value under \$25 (even if the personalized item cost the source more than \$50), unless the personalized item is made from gold or some other valuable material that would have value over \$25 as a raw material.

## Entertainment

Employees may not accept any gifts of entertainment over \$50 in value from any single source in a calendar year that has a legislative or administrative interest in any matter subject to the decision of the employee unless:

1. The entertainment is incidental to the main purpose of another event (i.e., a band playing at a reception). Entertainment that involves personal participation is not incidental to another event (such as a golf tournament at a conference); or
2. The employee is acting in ~~his/her~~ **their** official capacity for a ceremonial purpose. Entertainment is ceremonial when an employee appears at an entertainment event for a “ceremonial purpose” at the invitation of the source of the entertainment who requests the presence of the employee at a special occasion associated with the entertainment. Examples of an appearance by an employee at an entertainment event for a ceremonial purpose include: throwing the first pitch at a baseball game, appearing in a parade and ribbon cutting for an opening ceremony.

## Exceptions

The following are exceptions to the ethics rules on gifts that apply to employees.

1. Gifts from relatives and members of the employee’s household to the employee are permitted in an unlimited amount; they are not considered gifts under the ethics rules;
2. Informational or program material, publications, or subscriptions related to the recipient’s performance of official duties;
3. Food, lodging, and travel generally count toward the \$50 aggregate amount per year from a single source with a legislative **or** administrative interest, with the following exceptions:

*Organized Planned Events.* Employees are permitted to accept payment for travel conducted in the employee’s official capacity, for certain limited purposes:

- a. Reasonable expenses (i.e., food, lodging, travel, fees) for attendance at a convention, fact-finding mission or trip, or other meeting do not count toward the \$50 aggregate amount IF:
  - (1) The employee is scheduled to deliver a speech, make a presentation, participate on a panel or represent the College; AND
    - (a) The giver is a unit of a:
      - (i) Federal, state or local government;
      - (ii) An Oregon or federally recognized Native American Tribe; OR
      - (iii) (iii) Nonprofit corporation.
  - (2) The employee is representing the College:
    - (a) On an officially sanctioned trade-promotion or fact-finding mission; OR
    - (b) Officially designated negotiations or economic development activities where receipt of the expenses is approved in advance by the President.



- b. The purpose of ~~the this~~ exception is to allow employees to attend organized, planned events and engage with the members of organizations by speaking or answering questions, participating in panel discussions or otherwise formally discussing matters in their official capacity. This exception to the gift definition does not authorize private meals where the participants engage in discussion.
4. Food or beverage, consumed at a reception, meal or meeting if held by an organization and if the employee is representing the College.
 

“Reception” means a social gathering. Receptions are often held for the purpose of extending a ceremonial or formal welcome and may include private or public meetings during which guests are honored or welcomed. Food and beverages are often provided, but not as a plated, sit-down meal;
  5. Food or beverage consumed by employee acting in an official capacity in the course of financial transactions between the public body and another entity described in ORS 244.020(7)(b)(I)(i);
  6. Waiver or discount of registration expenses or materials provided to employee at a continuing education event that the employee may attend to satisfy a professional licensing requirement;
  7. ~~An item-gift~~ received by the employee as part of the usual or customary practice of the employee’s private business, employment or position as a volunteer that bears no relationship to the employee’s position;
  8. Reasonable expenses paid to employee for accompanying students on an educational trip.

**Honoraria**

An employee may not solicit or receive, whether directly or indirectly, honoraria for the employee, the employee’s relative or any member of the employee’s household if the honoraria are solicited or received in connection with the official duties of the employee.

The honoraria rules do not prohibit the solicitation or receipt of an honorarium or a certificate, plaque, commemorative token or other item with a value of \$50 or less; or the solicitation or receipt of an honorarium for services performed in relation to the private profession, occupation, avocation or expertise of the employee.

**Definitions**

1. “Fair market value” is the dollar amount goods or services would bring if offered for sale by a person who desired, but was not obligated, to sell and purchased by one who is willing, but not obligated, to buy.
2. “Gift” means something of economic value given to an employee without valuable consideration of equivalent value, which is not extended to others who are not public officials on the same terms and conditions.
3. “Member of the household” means any person who resides with the employee.
4. “Public official” means any person who, when an alleged violation of this policy or other applicable state or federal law occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services.

5. “Relative” means the spouse or domestic partner, parent, step-parent, child, sibling, step-sibling, son-in-law or daughter-in-law of the employee; or the parent, step-parent, child, sibling, step-sibling, son-in-law or daughter-in-law of the spouse of the employee. Relative also includes any individual for whom the employee has a legal support obligation, whose employment provides benefits<sup>5</sup> to the employee, or who receives any benefit from the employee’s public employment.
6. “Potential conflict of interest” means any action or any decision or recommendation by a district employee that could result in a financial benefit or detriment for self or relatives or for any business with which the district employee or relatives are associated, unless otherwise provided by law.
7. An “actual conflict of interest” means any action or any decision or recommendation by a district employee that would result in a financial benefit or detriment for self or relatives or for any business with which the district employee or relatives are associated, unless otherwise provided by law.
8. A “legislative or administrative interest” means an economic interest, distinct from that of the general public, in any action subject to the official decision of an employee.
9. A “decision” means an act that commits the College to a particular course of action within the employee’s scope of authority and that is connected to the source of the gift’s economic interest.

END OF POLICY

---

**Legal Reference(s):**

[ORS 244.010 - 244.400](#)  
[ORS 332.016](#)

[ORS 659A.309](#)

[OAR 199-005-0001 - 199-020-0020](#)  
[OAR 584-020-0040](#)

~~OR. ETHICS COMM'N, OR. GOV'T ETHICS LAW, A GUIDE FOR PUBLIC OFFICIALS.~~

---

<sup>5</sup>Examples of benefits may include, but not be limited to, elements of an official compensation package including benefits such as insurance, tuition or retirement allotments.

## Drug-Free Workplace

The College recognizes controlled substance abuse as illegal and interfering with effective teaching, work and the development of a safe and healthy environment for learning. The College has a fundamental legal and ethical obligation to prevent controlled substance abuse and to maintain an alcohol/drug-free work and educational environment.

This policy applies to all members of the College (students, faculty, staff) while at the workplace, as that term is described below.

### 1. Definitions

- a. "Workplace" shall mean the site for the performance of work done for the College in connection with a federal grant or contract, including any building premises used by the College, any College-owned vehicle (or any other College-approved vehicle used to transport students or fellow employees to and from work-related activities or to transport fellow employees to and from different work sites) and any off-College property used for any College-sponsored or College-approved activity, event or function.
- b. "Drugs" shall include any illegal drug, hallucinogenic drug, prescription drug (in the possession of an individual without a valid prescription), narcotic drug, amphetamine, barbiturate, marijuana or any other controlled substance (as the same is defined in ORS 475.005 or Schedules I through V under the Federal Controlled Substances Act, 21 U.S.C. Section 812).
- c. "Alcohol" shall include any form of alcohol for consumption, including beer, wine, wine coolers or distilled liquor.

### 2. College Policy

The College prohibits the unlawful manufacture, distribution, dispensation, possession or use of alcohol or illicit drugs in the workplace. Alcohol may be consumed on the campus only upon the written consent, obtained before usage, of the President.

No College employee shall knowingly sell, market or distribute steroid or performance enhancing substances to College students with whom the employee has contact as part of the employee's College duties; or knowingly endorse or suggest the use of such drugs.

### 3. College Awareness Program

The College shall provide notice at least annually through in-service or otherwise of the following:

- a. The dangers of alcohol/drug abuse in the workplace;
- b. The College's policy of maintaining an alcohol/drug-free workplace/College;

- c. Information on appropriate, available alcohol/drug counseling or assistance programs; and
- d. Notice of the penalties that may be imposed upon employees/students for alcohol or drug abuse violation in the workplace/College.

#### 4. College Action

An employee who violates the terms of this policy shall, at his/her their own expense, satisfactorily participate in a drug or alcohol abuse assistance or rehabilitation program approved by the President. If the employee fails to satisfactorily participate in such program, employment may be suspended, his/her their contract nonrenewed, or he/she they may be dismissed, at the discretion of the President, which who shall base its the decision on the risk to the health or welfare of students or staff posed by the employee or on the probability of recurrence of the employee's violation of the policy in the future. Any student who violates the terms of this policy shall be subject to such disciplinary actions as the President determines is appropriate.

#### 5. Federal Drug-Free Workplace Act of 1988<sup>1</sup>

No employee engaged in work in connection with a direct federal grant or contract of \$100,000 or more shall unlawfully manufacture, distribute, dispense, possess or use any drug or alcohol on or in the workplace.

Each employee who is engaged in work related to a direct federal grant or contract of \$100,000 or more shall notify his/her their supervisor of his/her their conviction of any criminal drug statute based on conduct occurring in the workplace, as defined above, no later than five days after such conviction.

The College shall notify the federal granting agency within 10 days after receiving notice of an employee's conviction on any criminal drug violation occurring in the workplace.

#### 6. Good Faith Effort

The College shall make a good faith effort to maintain an alcohol/drug-free workplace through implementation of this policy.

END OF POLICY

---

#### Legal Reference(s):

[ORS 342.721](#)

[ORS 342.723](#)

[ORS 342.726](#)

[ORS 657.176](#)

[OAR 581-022-0416](#)

---

<sup>1</sup>Colleges directly receiving grants or contracts of \$100,000 or more from the federal government are required to meet this obligation.

## **~~Use or Possession of Tobacco Use on College Premises Products or Inhalant Delivery Systems~~**

The use of tobacco products or inhalant delivery systems on College premises is restricted to designated outdoor areas.

~~Possession of tobacco products and inhalant delivery systems by persons under the age of 21 is prohibited on all College grounds and property. This includes, but is not limited to: in facility buildings, at facility-sponsored activities, and in vehicles on facility grounds on all campuses, including satellite properties.~~

For the purpose of this policy, "tobacco product" is defined to include, but is not limited to, any lit cigarette, cigar, pipe, bidi, clove cigarette, electronic cigarette and any other lit smoking product; and smokeless or spit tobacco, also known as dip, chew, snuff or snus, in any form.

An "inhalant delivery system" means a device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to a person inhaling from a device; or a component of a device or a substance in any form sold for the purpose of being vaporized or aerosolized by a device, whether the component or substance is sold or not sold separately. This does not include products that are USFDA-approved for sale as a tobacco cessation product or for any other therapeutic purpose, marketed and sold solely for the approved purpose.

~~This policy applies to all College employees, volunteers, clients, students, visitors, vendors, and contractors.~~

~~Exceptions to this policy may be made for persons for whom a tobacco or nicotine products or a substance to be used with an inhalant delivery systems has been lawfully prescribed.~~

~~This policy shall be enforced at all times. The College President will develop administrative regulations and procedures as necessary to implement this policy, including provisions for notification, signage, disciplinary consequences, complaint procedures, and enforcement.~~

END OF POLICY

---

### **Legal Reference(s):**

[ORS 339.883](#)

[ORS 341.290\(2\)](#)

[ORS 431.840](#)

[ORS 431A.175](#)

[ORS 433.835 to -433.990](#)

SB 754 (2017)

### **Cross Reference(s):**

JFCG/KGC/GBK - Tobacco Use on College Premises  
KGC/GBK/JFCG - Tobacco Use on College Premises

Use or Possession of Tobacco Products or Inhalant Delivery Systems - GBK/JFCG/KGC 1-  
1

# Clackamas Community College

Code: **GBL**  
Adopted: 12/14/11  
Revised/Readopted: 5/09/18  
Orig. Code: ~~408~~

## Personnel Records

An official personnel ~~record~~ **file** will be established for each ~~person employed by~~ **employee** of the College and will be maintained by the human resources office in compliance with state law and appropriate collective bargaining agreements.

All records containing employee medical ~~condition~~ information ~~such as workers' compensation reports and release/permission to return to work forms~~ will be kept confidential, in a separate file from personnel records. Such records will be released only in accordance with the requirements of the Americans with Disabilities Act or other applicable law.

The President ~~or designee~~ **or designee** will be responsible for establishing ~~regulations~~ **procedures** regarding the control, use, safety and maintenance of all personnel records. ~~Employees will be given a copy of evaluations, complaints and written disciplinary actions to be placed in their personnel file and may submit a written response to be attached to the file copy.~~

Except as provided below, or required by law, ~~current and former~~ **current and former** College employees' personnel records will be available for use and inspection only by the following:

1. The individual employee. An employee ~~or designee~~ may arrange with the human resources office to inspect the contents of their personnel ~~file. record on any day the human resources office is open for business;~~ **file**;
2. Others designated in writing by the employee;
3. ~~The controller or a~~ **Auditors**, when such inspection is pertinent to carrying out their respective duties, or as otherwise specifically authorized by the Board. Information so obtained will be kept confidential. No files will be removed from their central location for personal inspection;
4. A Board member when specifically authorized by the Board. Information will be kept confidential. No files will be removed from their central location for personal inspection;
5. The President and vice presidents;
6. College administrators and supervisors who currently or prospectively supervise the employee;
7. Employees of the human resources office;
8. Attorneys for the College or the College's designated representative on matters of College business.

**Upon request from a prospective employer or a former employee, authorized College officials may disclose information about a former employee's job performance to a prospective employer. Such disclosure is presumed to be in good faith. Presumption of good faith can be rebutted by showing the information disclosed was knowingly false or deliberately misleading, was rendered with malicious purpose or violated any civil right of the former employee protected under ORS 659 or ORS 659A.**

The President may permit persons other than those specified above to use and to inspect employee records when, in their opinion, the person requesting access has a legitimate official purpose. The President will determine in each case the appropriateness and extent of such access.

Release of personnel records to parties other than those authorized to inspect them will ~~be~~ only **be granted** upon receipt of a court order.

END OF POLICY

---

**Legal Reference(s):**

[ORS 341.290\(2\)](#)

[ORS 652.750](#)

[OAR 589-008-0100\(4\)](#)

OSEA v. Lake County Sch. District, 93 Or. App. 481 (1988).

Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (2012); 29 C.F.R. Part 1630 (2016); 28 C.F.R. Part 35 (2016).

Americans with Disabilities Act Amendments Act of 2008.

**Cross Reference(s):**

ACA - Americans with Disabilities Act



# Clackamas Community College

Code: **GBM**  
Adopted: 12/14/11  
Revised/Readopted: 5/09/18

## Staff Complaints and Appeals

It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported information in a manner as to disclose employer violations of any federal or state law, rule or regulation, mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety.

Procedures for processing staff grievances and appeals for ~~those employees covered by a collective bargaining agreement~~ will be contained in the appropriate **applicable collective bargaining agreement and/or Employee Handbook**.

~~Procedures for processing grievances and appeals for those employees not covered by a collective bargaining agreement will be developed by the President or designee, as necessary~~

END OF POLICY

---

### Legal Reference(s):

[ORS 341.290\(2\)](#)

[ORS 659A.199 to -659A.224](#)

[OAR 589-008-0100\(1\)\(i\)](#)

Anderson v. Central Point Sch. Dist., 746 F.2d 505 (9th Cir. 1984). Connick v. Myers, 461 U.S. 138 (1983).

### Cross Reference(s):

GBMA - Whistleblower

## Reporting Suspected Abuse of a Child

All College employees are, by law, mandatory reporters of child abuse and neglect. Any College employee who has reasonable cause to believe that:

- Any child with whom the employee has come in contact with has suffered abuse or neglect, as defined by ORS 419B.005; or
- Any person with whom the employee comes in contact with has abused a child

shall immediately report their concerns or suspicions to the local office of the Oregon Department of Human Services (DHS) or its designee or to a local law enforcement agency within the county where the person making the report is located at the time of the contact pursuant to Oregon Revised Statute (ORS) 419B.010.

If known, the report shall contain the names and addresses of the child and the parents of the child or other persons responsible for the child's care, the child's age, the nature and extent of the suspected abuse, including any evidence of previous abuse, the explanation given for the suspected abuse, any other information that the person making the report believes might be helpful in establishing the possible cause of the abuse and the identity of a possible perpetrator.

The initiation of a report in good faith pursuant to this policy may not adversely affect any terms or conditions of employment or the work environment of the person initiating the report or who may have been subjected to abuse. If a student initiates a report of suspected abuse of a child by a College employee, contractor, agent, volunteer or student in good faith the student will not be disciplined by the College or any College employee, contractor, agent or volunteer. Intentionally making a false report of abuse of a child is a Class A violation.

Nothing in this policy prevents the College from disclosing information required by law or providing the routine transmission of administrative and personnel files pursuant to law.

### Definitions

“Abuse” means any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury; any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child; rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163; sexual abuse, as described in ORS chapter 163; sexual exploitation as described in ORS 419B.015

“Agent” means a person acting as an agent for the College in a manner that requires the person to have direct, unsupervised contact with a child as defined in statute.

“Child” means an unmarried person who is under 18 years of age or is under 21 years of age and residing in or receiving care or services at a child-caring agency.

“Contractor” means a person providing services to the College under a contract in a manner that requires the person to have direct, unsupervised contact with a child as defined in statute.

“Volunteer” means a person acting as a volunteer for the College in a manner that requires the person to have direct, unsupervised contact with a child as defined in statute.

END OF POLICY

---

**Legal Reference(s):**

[ORS 341.290](#)  
ORS419B.005

[ORS 419B.005 - 419B.050](#)  
ORS419B.010

Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (2018); Family Educational Rights and Privacy, 34 C.F.R. Part 99 (2018).

## Children on Campus

### Employees

Except for employer-sponsored programs such as “Take Your Child to Work Day,” institutional liability prohibits employees from bringing their children to work if they will be supervising the child(ren) while they are working. Prior approval for rare exceptions are at the sole discretion of the supervisor. An employee may not bring children to work. In rare instances, the employee’s supervisor may, at their discretion, grant an exception.

### Students

Children that are not enrolled in courses. Only enrolled students may not sit in attend classes or labs, except for sponsored programs (i.e. Skills Contest). Prior Exceptions may be requested and approval for rare exceptions are is at the sole discretion of the instructor.

Minors who are brought to any College campus site by a responsible adult, including parking area, are not to be left unattended or unsupervised; and the adult assumes all liability for the child’s welfare and negligence. Child care is the responsibility of the adult and not the College. This regulation does not prohibit College premises from being used as it is intended by any customer of the College (i.e. library).

END OF POLICY

---

Legal Reference(s):

[ORS 341.290\(2\)](#)

## Family Medical Leave

When applicable, the College will comply with the provisions of the Family and Medical Leave Act (FMLA) of 1993, the Oregon Family Leave Act (OFLA) of 1995, ~~the Military Family Leave Act as part of the National Defense Authorization Act of 2008 and for Fiscal Year 2010 (which expanded certain leave to military families and veterans for specific circumstances),~~ and the Oregon Military Family Leave Act (OMFLA) of 2009 and other applicable provisions of **state and federal laws**, Board policies and collective bargaining agreements regarding family medical leave.

~~FMLA applies to community colleges with 50 or more employees within 75 miles of the employee's work site, based on employment during each working day during any of the 20 or more work weeks in the calendar year in which the leave is to be taken, or in the calendar year preceding the year in which the leave is to be taken. The 50 employee test does not apply to educational institutions for determining employee eligibility.~~

~~OFLA and OMFLA applies to community colleges that employ 25 or more part-time or full-time employees in Oregon, based on employment during each working day during any of the 20 or more work weeks in the calendar year in which the leave is to be taken, or in the calendar year immediately preceding the year in which the leave is to be taken.~~

~~In order for an employee to be eligible for the benefits under FMLA, they must have been employed by the College for at least 12 months and have worked at least 1250 hours during the past 12-month period.~~

~~In order for an employee to be eligible for the benefits under OFLA, they must work an average of 25 hours per week and have been employed at least 180 calendar days prior to the first day of the family medical leave of absence. For parental leave purposes, an employee becomes eligible upon completing at least 180 calendar days immediately preceding the date on which the parental leave begins. There is no minimum average number of hours worked per week when determining employee eligibility for parental leave.~~

~~OMFLA applies to employees who work an average of at least 20 hours per week; there is no minimum number of days worked when determining an employee's eligibility for OMFLA.~~

The President or designee will develop administrative regulations as necessary for the implementation of the provisions of both federal and state law.

END OF POLICY

---

**Legal Reference(s):**

[ORS 332.507](#)

[ORS 659A.093](#)

[ORS 659A.150 - 659A.186](#)

[ORS 342.545](#)

[ORS 659A.096](#)

[ORS 659A.090](#)

[ORS 659A.099](#)

[OAR 839-009-0200 to-0320](#)

Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (2012); 29 C.F.R. Part 1630 (2017); 28 C.F.R. Part 35 (2017).

Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 (2012); 5 U.S.C. §§ 6381-6387 (2012); Family and Medical Leave Act of 1993, 29 C.F.R. Part 825 (2017).

Americans with Disabilities Act Amendments Act of 2008.

Escriba v. Foster Poultry Farms, Inc. 743 F.3d 1236 (9<sup>th</sup> Cir. 2014).

## ~~Federal Family and Medical Leave/State Family Medical Leave~~

### **Purpose**

There are both state and federal laws that grant job protection to eligible employees needing to take time off to care for themselves or certain family members. The Family and Medical Leave Policy outlines the applicable laws as well as required Clackamas Community College process steps so that employees understand circumstances that qualify for job protection, which laws apply, and what steps an employee needs to take to ensure these protections are in place.

The primary laws that apply to family and medical leave situations in Oregon are the Oregon Family Leave Act (OFLA) and the federal Family and Medical Leave Act (FMLA). Both laws were passed to enable employees to take “protected” time off work for specific family or medical situations. OFLA and FMLA require covered employers to provide up to 12 weeks of “protected leave” during a year for qualifying situations. Protected leave means that the College cannot discipline or fire an employee for taking time off for a situation that qualifies for OFLA and/or FMLA leave. The College is subject to both OFLA and FMLA.

Although both OFLA and FMLA provide employees with protected leave, the laws differ in many areas. This Policy is designed to communicate the most important components of each leave law. Please note that if more than one rule or law applies, employees will be treated under whichever rule or law is most favorable to the employee.

### **Coverage**

Federal law covers public agencies, including Colleges. In order for College employees to be eligible, however, they must be employed at a work site with 50 or more employees within 75 miles of the employee’s work site for each working day during each of the 20 or more calendar workweeks in the year in which the leave is taken or in the preceding calendar year. State law covers Colleges that employ 25 or more part-time or full-time employees for each working day during 20 or more calendar workweeks in the calendar year in which the leave is to be taken, or in the calendar year immediately preceding the year in which the leave is to be taken.

### **Eligibility**

The federal FMLA and state of Oregon OFLA laws have different eligibility requirements depending on the reason the employee needs to take leave, the employee’s length of employment, and number of hours worked by the employee.

- The federal FMLA law applies to employees who have worked for the College for at least 12 months and for at least 1250 hours during the year preceding the start of the leave.

- **The state of Oregon OFLA law generally applies to employees who work an average of 25 hours or more per week for the College during the at least 180 days or more immediately prior to the first day of the start of the requested leave. Eligibility for OFLA for the reasons outlined below provide exceptions to this employment requirement:**
  - For parental leave purposes, an employee becomes eligible upon completing at least 180 days immediately preceding the date on which the parental leave begins. There is no minimum average number of hours worked per week when determining employee eligibility for parental leave.
  - **During a public health emergency, employees who have worked an average of 25 hours or more per week for the College during the 30 days prior to the leave.**
  - Oregon Military Family Leave Act applies to employees who work an average of at least 20 hours per week.

~~In determining that an employee has been employed for the preceding 180 calendar days, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. If an employee continues to be employed by a successor in interest to the original employer, the number of days worked are counted as continuous employment by a single employer.~~

~~In determining 25 hours average workweek, the employer must count the actual hours worked using guidelines set out pursuant to the Fair Labor Standards Act.~~

## **Definitions**

~~“Child<sup>1</sup>,” for or the purpose of taking sick child leave under state law, means a biological, adopted or foster child, or stepchild of the employee, for whom the employee has parental rights and duties as defined by law or a child with whom the employee is or was in a relationship of “in loco parentis.” A legal or biological relationship is not required. The child must be under 18 years of age or may be 18 years of age or older if incapable of self care due to mental or physical impairment as defined by ORS 659A.100 (2)(d). For purposes of sick child leave only, child also includes child of employee’s same-gender domestic partner.~~

~~“Contingency Operation” is a military operation that:~~

- ~~1. Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or~~
- ~~2. Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.~~

~~“Covered active duty” means:~~

---

<sup>1</sup> For FMLA, the age of the son or daughter at the onset of a disability is not relevant in determining a parent’s entitlement to FMLA leave.



1. ~~In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and~~
2. ~~In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of Title 10, United States Code.~~

~~“Covered service member” means:~~

1. ~~A member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or~~
2. ~~A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.~~

~~“Family member,” for purposes of FMLA and OFLA leave, means a(n):~~

1. ~~Spouse;~~
2. ~~Child of the employee (biological, adopted, foster or step child, a legal ward, or child of the employee standing in loco parentis);~~
3. ~~Custodial parent;~~
4. ~~Nonecustodial parent;~~
5. ~~Biological parent;~~
6. ~~Adoptive parent;~~
7. ~~Step or foster parent; or~~
8. ~~Individual who was in loco parentis to the employee when the employee was a child.~~

~~Additionally, when defining “family member” under OFLA, this definition includes a:~~

9. ~~Same gender domestic partner;~~
10. ~~Child of same gender domestic partner;~~
11. ~~Grandparent;~~
12. ~~Grandchild;~~

13. ~~Parent in law; or~~
14. ~~Parent of same gender domestic partner.~~

~~“Next of kin” means the nearest blood relative of the eligible employee.~~

~~“Serious Health Condition,” under federal law, means an illness, injury, impairment or physical or mental condition that involves:~~

1. ~~Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility;~~
2. ~~Any period of incapacity requiring absence from work, school or other regular daily activities, of more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider;~~
3. ~~Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days;~~
4. ~~Illness, disease or condition is terminal, requires constant care, and poses an imminent danger of death; or~~
5. ~~Disability due to pregnancy, childbirth or prenatal care.~~

~~Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three 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.~~

~~An employee is unable to perform the functions of the position when the health care provider finds that the employee is unable to work at all or is unable to perform any of the essential functions of the employee’s position within the meaning of the Americans with Disabilities Act of 1990 and Americans with Disabilities Act Amendments Act of 2008 and federal regulations. The College requires medical verification from a health care provider and provides a statement of the essential functions of the employee’s position for the provider to review.~~

~~A “serious health condition” under state law means an illness, injury, impairment or physical or mental condition of an employee or family member that:~~

1. ~~Requires inpatient care in a hospital, hospice or residential medical care facility such as a nursing home. When a family member resides in a long-term residential care facility, leave shall apply only to:~~
  - a. ~~Transition periods spent moving the family member from one home or facility to another, including time to make arrangements for such transitions;~~

- b. ~~Transportation or other assistance required for a family member to obtain care from a physician;~~
  - c. ~~Serious health conditions as described in items 2-8 below.~~
2. ~~Is deemed by the treating health care provider to pose an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;~~
  3. ~~Requires constant or continuing care such as home care administered by a health care professional;~~
  4. ~~Involves a period of incapacity. Incapacity is the inability to perform at least one essential job function, or to attend school or perform regular daily activities for more than three consecutive calendar days and any subsequent required treatment or recovery period relating to the same condition. This incapacity must involve:~~
    - a. ~~Two or more treatments by a health care provider;~~
    - b. ~~One treatment plus a regimen of continuing care.~~
  5. ~~Results in a period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues over an extended period of time and may cause episodic rather than a continuing period of incapacity such as asthma, diabetes or epilepsy.~~
  6. ~~Involves permanent or long term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, a severe stroke or terminal stages of a disease;~~
  7. ~~Involves multiple treatments for restorative surgery or for a condition such as chemotherapy for cancer, physical therapy for arthritis or dialysis for kidney disease that if not treated would likely result in incapacity of more than three days; or~~
  8. ~~Involves any period of disability of a female due to pregnancy or childbirth or period of absence for prenatal care.~~

~~“Serious injury or illness,” for the purpose of caring for a covered service member, means:~~

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

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

### **Purpose of Leave**

Federal and state laws allow eligible employees to take FMLA or OFLA leave for the following purposes, commonly referred to as parental leave, serious health condition leave, pregnancy disability leave, injured service member leave, military family leave, leave for the death of a family member and sick child leave (sick child leave and death of a family member leave are OFLA only):

- 1. ~~Birth of the employee's child (eligibility expires 12 months after the birth);~~
- 2. ~~Placement of a child for adoption or foster care when the child is under 18 years of age or older than 18 if incapable of self-care (eligibility expires 12 months after placement);~~
- 3. ~~Care of a family member with a serious health condition;~~
- 4. ~~Employee's own serious health condition;~~
- 5. ~~Qualifying exigency while the employee's spouse, son, daughter or parent is on covered active duty or called to covered active duty status during the deployment of the member with the Armed Forces to a foreign country." (CFR section 825.126(a)(1 and 2); Federal Register Vol. 78, No. 25, Page 8917);~~
- 6. ~~Injured Service member Leave: Allowing an employee leave to care for a covered service member who is the employee's spouse, son, daughter, parent, or next of kin, who has been injured in the line of duty as a member of the Armed Forces;~~
- 7. ~~State law allows employees to take leave for the care of a sick or injured child who requires home care but is not suffering from a serious health condition. The College is not required to grant leave for routine medical or dental appointments;~~

8. ~~State law allows employees to take leave for the death of a family member<sup>2</sup> to attend the funeral or alternative to a funeral of the family member, make arrangements necessitated by the death of the family member or grieve the death of the family member;~~
9. ~~Military Family Leave: Allowing leave for a spouse or domestic partner of a military personnel per each deployment of the spouse when the spouse has either been notified of an impending call to active duty, has been ordered to active duty, or has been deployed or on leave from deployment (OFLA).~~

### Length of Leave

**FMLA allows for up to 12 weeks of protected leave in a 12-month period. OFLA typically allows for 12 weeks of protected leave in a year but, for specific qualifying conditions, can allow up to 36 weeks. Approved FMLA and OFLA leaves can be taken intermittently in increments as small as one hour or in blocks of time up to 12 weeks.**

~~An employee eligible for FMLA leave under federal law is entitled to a total of 12 work weeks of leave during any 12-month period for the purposes specified above. A husband and wife who are eligible and who both work for the College may only take a combined total of 12 workweeks of leave if the leave is taken to care for a parent with a serious health condition or if the leave is for the birth of a child or the placement of a child for adoption or foster care.~~

~~There will be occasions where a husband and wife employed by the same College will not have to share the 12-week allotment of leave. This situation arises where an employee is eligible for both FMLA and OFLA or just OFLA leave and the employee is taking leave to care for a newborn with a serious health condition.~~

~~An employee eligible for Military Caregiver Leave is entitled to a total of 26 work weeks of leave to care for a covered service member during a single 12-month period. The 12-month period begins when the Military Caregiver Leave begins.~~

~~An employee eligible for OFLA leave under state law is entitled to a total of 12 workweeks of leave during any 12-month period for the purposes specified above. The 14 days of leave provided by the Oregon Military Family Leave Act and the two weeks of leave provided for the death of a family member are part of the 12 weeks. Two or more family members who are eligible and who both work for the College may not take OFLA leave at the same time unless:~~

1. ~~One employee needs to care for another employee who is a family member and who is suffering from a serious health condition;~~
2. ~~One employee needs to care for a child suffering from a serious health condition while another employee who is a family member is also suffering from a serious health condition;~~
3. ~~Both family members are suffering from a serious health condition;~~
4. ~~The employees are taking leave for the death of a family member; or~~

---

<sup>2</sup> Must be completed within 60 days of the date on which the eligible employee receives notice of the death of the family.

5. If the concurrent leave in such instances is permitted by the College.

In addition to the 12 workweeks of family leave authorized above, under state law a female eligible employee may take an additional 12 workweeks of leave within any one year period for an illness, injury or condition related to pregnancy or childbirth that disables the employee from performing her work duties.

An employee who takes 12 workweeks of OFLA leave for parental leave may also take up to an additional 12 workweeks of sick child leave within the same leave year. If the employee uses less than 12 weeks of parental leave, however, no additional sick child leave is available, except for the balance of the initial 12 weeks. The employee may also use this balance for any OFLA leave purpose.

A female employee may take up to 36 weeks of OFLA leave in one leave year, but only under the following circumstances:

1. The female employee takes 12 weeks of pregnancy disability leave; followed by
2. Twelve weeks of parental leave; followed by
3. Twelve weeks of sick child leave.

A male employee may take up to 24 weeks of OFLA leave in one year, but only under the following circumstances:

1. The male employee takes 12 weeks of parental leave; followed by
2. Twelve weeks of sick child leave.

The College requires parental leave be taken in one uninterrupted period and must be completed within 12 months of the birth, adoption or placement of the child. An exception must be made to allow parental leave to effectuate adoption or foster placement of the child. Such leave need not be taken in one, uninterrupted period with any additional parental leave.

The birth, adoption or foster placement of multiple children at one time entitles the employee to take only one 12-week period of parental leave.

Sick child leave need not be provided if another family member, including a noncustodial biological parent, is willing and able to care for the child.

For the purpose of intermittent leave, leave entitlement is calculated for an employee by multiplying the number of hours the employee normally works per week by 12. (For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours of leave.) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks worked prior to the beginning of the leave period shall be used for calculating the employee's normal workweek. (For example, an employee working an average of 25 hours per week is entitled to 12

times 25 hours, or a total of 300 hours of leave.) If an employee takes intermittent or reduced work schedule leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of leave to which the employee is entitled.

An employee, who has previously qualified for and taken some portion of OFLA leave, may request additional OFLA leave within the same leave year. The employee must re-qualify as an eligible employee for each additional leave requested unless one of the following exceptions apply:

1. A female employee who has taken 12 weeks of pregnancy disability leave need not re-qualify for 12 weeks in the same leave year for any other purpose;
2. An employee who has taken 12 weeks of parental leave does not need to re-qualify to take an additional 12 weeks in the same leave year for sick child leave; and
3. An employee granted leave for a serious health condition for the employee or a family member need not re-qualify if additional leave is taken in this leave year for the same reason.

For situations where time off is covered by OFLA, but not covered by FMLA leave (e.g., the employer has 25 to 49 employees; or the leave taken is for a sick child or for serious health condition of a same-gender domestic partner, parent-in-law, parent of the same-gender domestic partner, grandparent, or grandchild) the employer:

1. May allow an exempt employee with accrued paid leave to take OFLA leave in blocks of less than a full day. For these purposes, an exempt employee is a salaried executive, administrative or professional employee under the federal Fair Labor Standards Act or the state minimum wage and overtime laws;
2. May not reduce the salary of an exempt employee who does not have accrued paid leave and takes intermittent leave in blocks of less than a full day. To do so would result in the loss of exemption under state law.

The requirements of OFLA do not apply to any employer offering eligible employees a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, which provides as one of its options employee leave at least as generous as the leave required by OFLA.

An employee, who has previously qualified for and taken some portion of FMLA leave, may request additional FMLA leave within the same leave year. The employee need not re-qualify as an eligible employee if the additional leave applied for is in the same leave year and for the same condition.

Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt College operations.

### **Intermittent Leave and Alternate Duty**

An employer may transfer an employee on a foreseeable intermittent FMLA/OFLA leave or reduced work schedule into an alternate position with the same or different duties to accommodate the leave, provided the following exist:

1. ~~The employee accepts the transfer position voluntarily and without coercion;~~
2. ~~The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;~~
3. ~~The transfer is compliant with applicable collective bargaining agreements, as well as with state and federal law, providing all the employee protections found in FMLA regulations 29 C.F.R. Part 825;~~
4. ~~Transfer to an alternate position is used only when there is no other reasonable option available that would allow the employee to use intermittent leave or reduced work schedule; and~~
5. ~~The transfer is not used to discourage the employee from taking intermittent or reduced work schedule leave, or to create a hardship for the employee.~~

~~An employee transferred (as provided in 1- 5. above) to an alternate position for the purpose of a reduced work schedule, must be returned to the employee's former position.~~

~~FMLA/OFLA leave time for an employee on intermittent leave or a reduced work schedule is the difference between the number of hours the employee normally works and the number of hours the employee actually works during the intermittent leave or reduced work schedule. Holidays or days in which the College is not in operation are not counted toward intermittent or reduced work schedule FMLA/OFLA leave unless the employee was scheduled and expected to work on the holiday.~~

~~The College may transfer an employee recovering from a serious health condition to an alternate position that accommodates the serious health condition provided:~~

1. ~~The employee accepts the position voluntarily and without coercion;~~
2. ~~The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;~~
3. ~~The transfer is compliant with applicable collective bargaining agreements, as well as with state and federal law, providing all the employee protections found in FMLA regulations 29 C.F.R. Part 825; and~~
4. ~~The transfer is not used to discourage the employee from taking FMLA/OFLA leave for a serious health condition, or to create a hardship for the employee.~~

~~An employee is not on FMLA/OFLA leave if the employee has been transferred (as provided in section 1- 3. Above) to an alternate position for the purpose of alternate work duties that the employee is able to perform within the limitations of the employee's own serious health condition, but not requiring a reduced workweek. An employee working in an alternate position retains the right to return to the employee's original position unless all FMLA/OFLA leave taken in that leave year plus the period of time worked in the alternate position exceed 12 weeks.~~

~~An alternate position accommodating an employee's serious health condition may result in the employee working fewer hours than the employee worked in the original position. The employee's~~



FMLA/OFLA leave is the difference between the number of hours the employee worked in the original position and the number of hours the employee actually works in the alternate position.

~~Intermittent leave for school teachers is subject to special rules.~~

~~The College recognizes that state law will not always reduce the employee's FMLA 12 workweek entitlement (i.e., leave to care for a parent in law or sick child leave).~~

### **Special Rules for Teachers**

~~Special rules apply if leave is requested to be taken near the end of a term.~~

1. ~~Under OFLA leave, if a teacher requests, in advance, leave for a serious health condition and the teacher will be absent more than 20 percent of the total number of working days during the period over which the leave would be taken then the employer may require the teacher to elect one of the following options:~~
  - a. ~~To take family leave for one uninterrupted period of time as necessary to complete medical treatment. (School holidays and school vacation days are not counted as family leave.);~~
  - b. ~~To transfer temporarily into an available alternative position which better accommodates periodic absences or recurring periods of leave.~~
2. ~~Under FMLA leave, if a teacher begins leave more than five weeks before the end of the academic term because of the teacher's own serious health condition, the employer may require the teacher to remain on leave until the end of the term if:~~
  - a. ~~The family leave is at least three weeks long; and~~
  - b. ~~The teacher's return to work would occur within three weeks of the end of the term.~~
3. ~~If a teacher begins FMLA or OFLA leave within five weeks of the end of the academic term because of parental leave, the serious health condition of a family member, or to care for a covered service member, the employer may require the teacher to remain on family leave through the end of the term if:~~
  - a. ~~The leave is more than two weeks long; and~~
  - b. ~~The teacher's return would occur within the last two weeks of the term.~~
4. ~~If a teacher begins FMLA or OFLA leave within three weeks of the end of the academic term because of parental leave, to care for a family member with a serious health condition, or to care for a covered service member and the leave is greater than five working days, the employer may require the teacher to remain on family leave until the end of the term.~~
5. ~~If a teacher takes FMLA/OFLA leave to the end of the school year and continues the leave at the beginning of the next school term, the leave is consecutive rather than intermittent leave.~~
  - a. ~~The period between the end of the school term and the beginning of the next school term, when a teacher would not have been required to report for duty, is not counted against the teacher's FMLA or OFLA leave entitlements.~~

- b. ~~A teacher on FMLA/OFLA leave at the end of the school term must be provided with the same benefits during the period between school terms that the teacher would normally receive if no FMLA/OFLA leave were taken.~~
6. ~~If a teacher is required by the employer to remain on leave to the end of the academic term, only the period of leave the teacher requested shall be charged against the teacher's FMLA/OFLA leave entitlement.~~
7. ~~Nothing in FMLA/OFLA rules prohibits the employer from allowing the teacher to work as a substitute or in some other paid capacity during the weeks prior to the end of term under 3. or 4. above.~~
8. ~~Full-time employees covered by OFLA rules, and who have been maintained on the payroll by a College during 180 consecutive calendar days, are thereafter deemed to have been employed by that College for an average of at least 25 hours per week during the 180 days immediately preceding the date any OFLA leave begins.~~

### **Calculating the 12-Month Period for Leave**

~~The College will use the same method for calculating the 12-month period in which the 12-workweek FMLA and OFLA leave entitlement occurs for all employees. When determining~~ **To determine if an employee meets the eligibility requirements for FMLA and/or OFLA**, the College will use ~~the calendar year~~ a rolling backward leave year, which is the twelve-month period prior to leave.

**If an employee is eligible for both FMLA and OFLA, the employee's FMLA and OFLA leave will run concurrently.**

~~Leave to care for covered service members has its own 12-month year beginning on the first day of leave regardless of the College's method of calculating the 12-month period for leave.~~

### **Reasons an Employee May Qualify for Family and Medical Leave**

**FMLA and/or OFLA provide protected leave to employees for absences due to:**

- **A serious health condition of the employee or a family member (as defined by law) of the employee.**
- **Parental leave due to the birth, adoption or foster placement of a child.**
- **Pregnancy disability leave before or after the birth of a child for prenatal care.**
- **An employee caring for their child who has an illness, injury, or a condition requiring home care that is not serious, or for the employee to care for their child whose school or place of care is closed because of a public health emergency.**
- **Bereavement leave for the death of a family member (as defined by law).**
- **Military family leave for the spouse of a service member who has been called to active duty or is on leave from active duty.**

**The federal FMLA and state OFLA guarantee qualified employees up to 12 weeks of unpaid leave within a one-year period. When medically necessary, leave may also be taken intermittently, in increments as small as one hour.**

### **Requesting Family Medical Leave**

**Under federal and state law, an employee requesting FMLA and/or OFLA leave shall provide notice of the need for leave at least 30 days' notice prior to beginning their leave, if the leave is foreseeable. The notice shall be written and include the anticipated start, duration and reasons for the requested leave.**

**If advance notice is not possible, an employee must provide notice as soon as practicable. Employees eligible for OFLA leave are required to provide verbal or written notice within 24 hours of the start of the leave in unanticipated or emergency leave situations. The employee may designate a family member or friend to notify the College during that period of time.**

**Upon receiving the request for leave, Human Resources will provide the employee with a notice of eligibility, which may include a request for documentation verifying the purpose of the leave, including certification from a medical provider. The College may request additional information to determine if the leave qualifies for designation as FMLA/OFLA leave.**

**The College will notify the employee if the requested leave qualifies for and has been designated as FMLA and/or OFLA leave.**

**Employees must make a reasonable effort to schedule treatment, including intermittent leave and reduced leave, so as not to unduly disrupt the operation of the College.**

#### **Pay for Family and Medical Paid/Unpaid Leave**

**The College will comply with all State laws regarding paid family leave.**

~~Family leave under federal and state law is generally unpaid. The College requires the employees to use any accrued sick leave, compensatory time, vacation or personal leave days (or other paid time established by Board policy(ies) and/or collective bargaining agreement) in that order while on approved before taking FMLA and/or OFLA leave. without pay for the leave period. Employees must exhaust all leave accruals prior to taking unpaid time off for FMLA and/or OFLA leaves.~~

~~The College will notify the employee that the requested leave has been designated as FMLA and/or OFLA leave and, if required by the College, that accrued paid leave shall be used during the leave period. Such notification will be given to the employee prior to the commencement of the leave or within five working days of the employee's notice of an unanticipated or emergency leave. When the College does not have sufficient information to make a determination of whether the leave qualifies as FMLA or OFLA leave, the College will provide the required notice promptly when the information is available but no later than five working days after the College has received the information. Oral notices will be confirmed in writing no later than the following payday. If the payday is less than one week after the oral notice is given, written notice will be provided no later than the subsequent payday.~~

#### **Continuation of Health Insurance Benefits**

Under federal law, group health insurance benefits and premium payments must be continued on the same basis as coverage would have been provided and premiums paid if the employee had been continuously employed during the leave period. The College will continue to pay the College's contribution toward the employee's premiums. The employee will continue to pay the employee's share of premiums, if any. A 30-day grace period will be allowed for receipt of employee contributions. The College's obligation to maintain the employee's benefits will cease if the

employee's contribution is more than 30 days late. The College will provide written notice that the premium payment is more than 30 calendar days late. Such notice will be provided within 15 calendar days before coverage is to cease.

~~Under state law, benefits are not required to continue or accrue unless required by Board policy(ies) and/or provisions of collective bargaining agreements related to paid and unpaid leaves.~~

~~An employer electing to continue health or other insurance coverage for an employee on OFLA leave may require that the employee pay only the same share of health or other insurance premium during the leave that the employee paid prior to the leave. If an employee cannot or will not pay such costs, the employer may elect to discontinue benefit coverage, unless to do so would render the employer unable to restore the employee to full benefit coverage as required by law. If an employer pays any portion of any employee's benefit coverage for employees on non-OFLA leave, the employer must pay that portion during OFLA leave.~~

If an employee gives unequivocal notice of intent not to return to work from OFLA leave, the employee is entitled to complete the approved OFLA leave, providing that the original need for OFLA leave still exists. The employer's obligations under OFLA - to restore benefits (subject to COBRA requirements) and to restore the employee to his/her position at the end of the leave - cease and the employer is not required to hold a position vacant or available for the employee giving unequivocal notice of intent not to return.

In the event the College is required to pay or elects to pay any part of the costs of providing health, disability, life or other insurance coverage for an employee during the period of FMLA or OFLA leave that should have been paid by the employee, the College may deduct, on the employee's return to work, such amounts from the employee's pay as have been advanced.

~~In no event may the total deducted exceed 10 percent of the employee's gross pay each pay period.~~

### **Return to Work**

After completing a family medical leave ~~completion of leave granted under federal and state law~~, an employee is generally entitled to be returned to the same position the employee held when leave **began commenced** or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment unless otherwise excepted by law.

### **~~Fitness for Duty Certification~~**

If the leave was required for the employee's own serious health condition, including **an** intermittent leave, the College may require the employee to obtain and ~~present~~ **provide to the College** a fitness-for-duty certification from **a** health-care provider **prior to returning to work**. ~~that the employee is able to resume work. The certification will specifically address the employee's ability to perform the essential functions of the employee's job as they relate to the health condition that was the reason for the leave.~~

**The College will notify the employee when the leave is designated as an FMLA and/or OFLA leave if the College will require a fitness-for-duty report prior to the employee's return-to-work.** ~~If the College is going to require a fitness for duty certification upon return to work, the College must notify the employee of such requirement when the leave is designated as FMLA leave.~~ The College is responsible for any co-pay or other out-of-pocket costs incurred by the employee in **obtaining the**

providing certification. Failure to provide **a required** the fitness-for-duty certification may result in a delay **in** or denial of reinstatement **to employment**.

### **Medical Certification**

~~When an employee provides 30 or more days notice when applying for FMLA and/or OFLA leave, other than for parental leave, the College requires the employee to provide medical documentation when appropriate to support the request for leave. The College will provide written notification to employees of this requirement within five working days of employee's request for leave. If the employee provides less than 30 days notice, the employee is required to submit such medical certification no later than 15 calendar days after receipt of the College's notification that medical certification is required.~~

~~The College may request re-certification of a condition when the minimum duration of a certification expires if the employee still needs leave. If the certification does not indicate a duration or indicates that it is ongoing, the College may request re-certification at least every six months in connection with an absence.~~

~~Under federal law, a second medical opinion may be required whenever the College has reason to doubt the validity of the initial medical opinion. The health care provider may be selected by the College. The provider shall not be employed by the College on a regular basis. Should the first and second medical certifications differ, a third opinion may be required. The College and the employee will mutually agree on the selection of the health care provider for a third medical certification. The third opinion will be final. Second and third opinions and the actual travel expenses for an employee to obtain such opinions will be paid for by the College.~~

~~Under state law, if an employee requests OFLA leave because of a serious health condition, the College may require a second opinion and designate the health care provider. The provider may not be employed by the College. Should the two opinions conflict, the College may require a third opinion and that the two providers designate the third health care provider. The third opinion will be final. Second and third opinions and the actual travel expenses for the employee to obtain such opinions will be paid for by the College.~~

~~An employer may not delay the taking of an OFLA leave in the event that medical certification is not received prior to the commencement of a leave taken subject to the timelines set forth in this regulation. The employer may designate the leave as provisionally approved subject to medical certification. The employer shall provide the employee with written notice of any requirement to provide medical certification of the need for leave and the consequences for failure to do so. The employee must be allowed a minimum of 15 days to provide medical certification.~~

~~If the employee elects or the College requires substitution of accrued sick leave, vacation or other paid leave for unpaid leave pursuant to a collective bargaining agreement or other Board policy, the College will follow the medical documentation requirements of the applicable leave policy or contract provision whenever such requirements are more beneficial to the employee.~~

~~If an employee has taken sick child leave on all or any part of three separate days during a leave year, the employer may require medical certification on the fourth day or subsequent occurrence of sick child leave within that leave year. The employer must pay the cost of the medical certification not covered~~

~~by insurance or other benefit plan. The opinion of the health care provider shall be binding. The employer may not require the employee to obtain a second opinion. The employer is not required to request medical certification for sick child leave exceeding three days and may make such requests at the employer's discretion.~~

### **Notification**

~~Any notice required by federal and state laws explaining employee rights and responsibilities will be posted outside human resources at each campus and online. Additional information may be obtained by contacting the dean of human resources.~~

### **Record Keeping/Posted Notice Requirements**

The College will maintain all records as required by federal and state laws including dates leave is taken by employees, identified separately from other leave; ~~hours/days of leave~~; copies of general and specific notices to employees, including Board policy(ies) and regulations; premium payments of employee health benefits while on leave and records of any disputes with employees regarding granting of leave. Medical documentation will be maintained separately from personnel files as confidential medical records.

~~The College will post notice of Federal Family and Medical Leave Act and Oregon Family Leave Act requirements.~~ **Any notice required by federal and state laws explaining employee rights and responsibilities will be posted outside human resources at each campus and online. Additional information may be obtained by contacting human resources.**

### **Federal vs. State Law**

~~Both federal and state laws contain provisions regarding leave for family illness. Federal regulations state an employer must comply with both laws; that the federal law does not supersede any provision of state law that provides greater family leave rights than those established pursuant to federal law and that state and federal leave entitlements run concurrently. State law requires that federal and state leave run concurrently when possible. For example, due to differences in regulations, an employee who takes leave after 180 days of employment but before one year, is still eligible to take a full 12 workweeks of federal leave after meeting the one-year work requirement. After the first work year, leave will run concurrently.~~

~~Procedures for employees subject to collective bargaining agreements shall be governed by the respective agreements; failing such provisions Board policies and administrative regulations shall apply.~~

## **EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE**

### **ACT**

#### **Basic Leave Entitlement**

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

#### **Military Family Leave Entitlements**

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

#### **Benefits and Protections**

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

#### **Eligibility Requirements**

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

#### **Definition of Serious Health Condition**

A 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.

#### **Use of Leave**

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

#### **Substitution of Paid Leave for Unpaid Leave**

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

#### **Employee Responsibilities**

Employees must provide 30 days advance notice 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 and generally must comply with an employer's normal call-in procedures. Employees must provide sufficient information for the employer 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. Employees also must inform the employer 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.

#### **Employer Responsibilities**

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

#### **Unlawful Acts by Employers**

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- 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.

#### **Enforcement**

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer. 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.

~~FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.~~

**For additional information:**

~~1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627~~

~~[WWW.WAGEHOUR.DOL.GOV](http://WWW.WAGEHOUR.DOL.GOV)~~

~~U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division~~



## **Leave and Accommodations for Victims of Domestic Violence, Harassment, Sexual Assault, and Stalking Leave**

### **Definitions**

1. ~~“Covered employer” means an employer who employs six or more individuals in the state of Oregon for each working day through each of 20 or more calendar workweeks in the year in which the eligible employee takes leave to address domestic violence, harassment, sexual assault or stalking, or in the year immediately preceding the year in which an eligible employee takes leave for domestic violence, harassment, sexual assault or stalking.~~
2. ~~“Eligible employee” means an employee who is a victim of domestic violence, harassment, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is a victim of domestic violence, harassment, sexual assault or stalking.~~
3. ~~“Protective order” means an order authorized by Oregon Revised Statute (ORS) 30.866, 107.095(1)(c), 107.700—107.735, 124.005—124.040 or 163.730—163.750 or any other order that restrains an individual from contact with an eligible employee for the employee’s minor child or dependent.~~
4. ~~“Reasonable safety accommodation: refers to work modifications which could include changes to the employee’s work locations, assignments, job structure, contact information and security access which the employee requests and which would not pose undue hardship to the College.~~
5. ~~“Victim of domestic violence” means an individual who has been a victim of abuse as defined by ORS 107.705; or any other individual designated as a victim of domestic violence by rule adopted under ORS 659A.805.~~
6. ~~“Victim of harassment” means an individual against whom harassment has been committed as described in ORS 166.065 and any other individual designated as a victim of harassment by rule adopted under ORS 659A.805.~~
7. ~~“Victim of sexual assault” means an individual against whom a sexual offense has been committed as described in ORS 163.467 or 163.525; or any other individual designated as a victim of sexual assault by rule adopted under ORS 659A.805.~~
8. ~~“Victim of stalking” means an individual against whom stalking has been committed as described in ORS 163.732; or an individual designated as a victim of stalking by rule adopted under ORS 695A.805; or an individual who has obtained a court’s stalking protective order or a temporary court’s stalking protective order under ORS 30.866.~~

9. ~~“Victim services provider” means a prosecutor based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, harassment, sexual assault or stalking.~~

**The** A-College (~~covered employer~~) shall **will** allow an (eligible) employee to take reasonable leave for any of the following reasons:

1. To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee’s minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, harassment, sexual assault or stalking;
2. To seek medical treatment for or to recover from injuries caused by domestic violence, or sexual assault or harassment or stalking of the eligible employee or the employee’s minor child or dependent;
3. To obtain or assist a minor child or dependent in obtaining counseling from a licensed mental health professional related to an experience of domestic violence, harassment, sexual assault or stalking;
4. To obtain services from a victim services provider for the eligible employee or the employee’s minor child or dependent;
5. To relocate or take steps to secure an existing home to ensure health and safety of the eligible employee or the employee’s minor child/dependent.

The College may limit the amount of leave, if the employee’s leave creates an ~~undue~~ **undue** hardship on the College.

The College shall not deny leave to an employee or discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regards to promotion, compensation or other terms, conditions or privileges of employment as a result of taking such leave.

The employee shall give the ~~district~~ **college** reasonable advanced notice of the employee’s intent to take leave unless giving advance notice is not feasible.

The College may require the employee to provide certification that:

1. The employee or minor child/dependent is a victim of domestic violence, harassment, sexual assault or stalking; and
2. The leave is taken for one of the identified purposes in this policy.

Sufficient certification includes:

1. A copy of a report from law enforcement indicating the employee or child/dependent was a victim of domestic violence, harassment, sexual assault or stalking.
2. A copy of a protective order or other evidence from a court, administrative agency or attorney that the employee appeared in or was preparing for a civil, criminal or administrative proceeding related to domestic violence, harassment, sexual assault or stalking.

3. Documentation from an attorney, law enforcement officer, health care professional, licensed mental professional or counselor, member of the clergy or a victim services provider that the employee, employee's child or dependent was undergoing counseling, obtaining services or relocating as a result of domestic violence, harassment, sexual assault or stalking.

All records and information kept by the College regarding the employee's leave and accommodation, including the request or obtaining of leave is confidential and may not be released without the express permission of the employee unless otherwise required by law. This information will be kept in a file separate from the employee's personnel file.

**The employee may use all accrued leave time, including personal, sick and vacation leave. The employee may choose the order in which accrued leave is to be used when more than one type of paid leave is available.**

### **Definitions**

1. "Eligible employee" means an employee who is a victim of domestic violence, harassment, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is a victim of domestic violence, harassment, sexual assault or stalking.
2. "Protective order" means an order authorized by Oregon Revised Statute (ORS) 30.866, 107.095(1)(c), 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750 or any other order that restrains an individual from contact with an eligible employee or the employee's minor child or dependent.
3. "Victim of domestic violence" means an individual who has been a victim of abuse as defined by ORS 107.705; or any other individual designated as a victim of domestic violence by rule adopted under ORS 659A.805.
4. "Victim of harassment" means an individual against whom harassment has been committed as described in ORS 166.065 and any other individual designated as a victim of harassment by rule adopted under ORS 659A.805.
5. "Victim of sexual assault" means an individual against whom a sexual offense has been committed as described in ORS 163.467 or 163.525; or any other individual designated as a victim of sexual assault by rule adopted under ORS 659A.805.
6. "Victim of stalking" means an individual against whom stalking has been committed as described in ORS 163.732; or an individual designated as a victim of stalking by rule adopted under ORS 695A.805; or an individual who has obtained a court's stalking protective order or a temporary court's stalking protective order under ORS 30.866.
7. "Victim services provider" means a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, harassment, sexual assault or stalking.

END OF POLICY

---

### **Legal Reference(s):**

[ORS 192.355\(38\)](#)[ORS 659A.270](#) - 659A.290

# Clackamas Community College

Code:

GCDA/GDDA

Adopted:

## Background Checks, Criminal Records Checks, and Fingerprinting

The College will require background checks and criminal records checks, which may include fingerprinting, for all newly hired employees. The College will also require background checks and criminal records checks which may include fingerprinting for volunteer positions if required by Oregon Revised Statutes (ORS), Oregon Administrative Rules and/or College policy.

Background checks, criminal records checks, and fingerprinting will be conducted in compliance with state and federal guidelines.

All information obtained in the course of the background check, criminal records check and/or fingerprinting will be kept confidential.

Criminal records checks and/or fingerprinting for employees of the College will be initiated and/or updated only when required by state or federal statute and only with the explicit authorization of the Chief Human Resources Officer or designee.

### Criteria for Mandated Background Checks, Criminal Records Checks and/or Fingerprinting

Consistent with state and federal laws, the College may identify the need to conduct background checks, criminal records checks and/or fingerprinting for employees of the College, volunteers or interns if a promotion, change in position, job assignment or job classification, or a change in program services or requirements results in any of the following conditions being true:

- The individual(s) in the position would have direct, unsupervised contact with students under the age of 18; or
- The individual(s) in the position would have direct, unsupervised contact with developmentally disabled adults; or
- The individual(s) in the position would have access to personally identifiable information of students and/or employees, including Social Security numbers, dates of birth, driver's license numbers, medical information, personal financial information or criminal records information, or the criminal records check and/or fingerprinting is required because of an investigation; or
- The individual(s) in the position provides information technology services and has control over, or access to, information technology systems that would allow the individual to harm the information technology systems or the information contained in the systems.

Designation of a position or assignment for background check, criminal records checking and/or fingerprinting requires the approval of the Chief Human Resources Officer or designee.

### Potentially Disqualifying Convictions

Conviction of crime relevant to a fitness for employment determination:

- All felonies;
- All Class A misdemeanors;
- Any United States Military or international crime that is equivalent to any crime listed in this section;
- Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section (1) pursuant to ORS 161.405, 161.435 or 161.450;
- Any crime based on criminal liability for conduct of another pursuant to ORS 161.555, when the underlying crime is listed in this subsection (1);
- Any conviction for a crime which would require the individual to register as a sex offender.

The Chief Human Resources Officer or designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check and/or fingerprinting indicates a subject individual may have committed or been convicted of a crime. When necessary, the Chief Human Resources Officer or designee will consult with legal counsel.

### **Expunged Juvenile Record**

Under no circumstances shall a subject individual be denied opportunities under this policy because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 through 419A.262.

### **Fitness Determination**

The Chief Human Resources Officer or designee must use these criteria to determine whether the subject individual is fit to hold a position, provide a service, volunteer, or be employed based upon the criminal records check and/or fingerprinting obtained, or on any false statement made regarding criminal records checks and/or fingerprinting. When necessary, the Chief Human Resources Officer or designee will consult with legal counsel.

In making the fitness determination, the following will be considered:

- The nature of the crime the individual was convicted of;
- The facts that support the conviction or indicate the making of the false statement;
- The relevancy, if any, of the crime the individual was convicted of or the false statement to Oregon or federal laws and the specific requirements of the subject individual's proposed position, services, volunteer activity or employment; and
- Intervening circumstances relevant to the responsibilities and circumstances of the position, services, volunteer activity or employment. Intervening circumstances include but are not limited to:
  - a. The passage of time since the commission of the crime;
  - b. The age of the subject individual at the time of the crime;
  - c. The likelihood of a repetition of offenses or of the commission of another crime;
  - d. The subsequent commission of another relevant crime; whether the conviction was set aside and the legal effect of setting aside the conviction; and
  - e. A recommendation of an employer.

### **Process for Conducting Background Checks, Criminal Records Checks and/or Fingerprinting**

If a background check, criminal records check and/or fingerprinting is required, it will be conducted by an authorized agency after a conditional offer of employment. The college will pay the cost of the background check, criminal records check and fingerprinting. Generally, the applicant may not begin work or be unconditionally hired before the results of the background check, criminal records check and/or fingerprinting are known and meet the above-stated criteria.

The background check, criminal records check and/or fingerprinting process will include:

- A notice to the job applicant or volunteer advising them of the requirement to complete a background check, criminal records check and/or fingerprinting;
- Obtaining the job applicant's written permission to conduct the background check, criminal records check and/or fingerprinting;
- The opportunity for a job applicant to appeal an adverse employment decision that is made based on the results of the background check, criminal records check and/or fingerprinting report.

The opportunity to become employed, promoted, or moved to a different job assignment will terminate immediately for all prospective employees considered ineligible according to the standards set forth in this policy.

Individuals who refuse to consent to the background check, criminal records check or fingerprinting when such criminal records checks or fingerprinting are required by state or federal laws, mandated by state or

federal regulations or required by Board policy, shall not be considered eligible for employment in the designated position.

**Background Checks may include:**

- Personal and professional reference checks;
- Verification of prior employment verification – including the dates of employment, positions held, information regarding performance ratings, reason for departure, and eligibility for rehire;
- Educational degree verification
  - When required, new employees, within 30 days of hire, must request official transcripts and have them mailed directly from the issuing institution to Clackamas Community College human resources.
  - If the a degree was earned from an institution outside of the United States, an official international degree evaluation will be accepted.
- Credential Verification
  - When required, new employees, within 30 days of hire, must provide official copies of professional certifications.
- Motor Vehicle Records
  - Required only when driving is an essential part of the position and will include notice to the applicant and written permission before such check.

END OF POLICY

---

**Legal References:**

[ORS 341.290](#)

[OAR 581-021-0510 – 021-0512](#)

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et. seq. (2012).

# Clackamas Community College

Code: GCPC/GDPC

Adopted:

## Resignation and/or Retirement of Staff

To assist the community college in its planning efforts, employees considering resignation and/or retirement are encouraged to notify the college as early as possible, preferably at the beginning of the academic year during which the separation will take place.

Resigning or retiring employees will provide written notice of resignation or retirement to both their immediate supervisor and to human resources.

The separation date for employees leaving the college will be the last day worked. Employees must work on their last day of employment. Employees cannot utilize vacation leave, sick leave, compensatory time, personal leave or any other type of leave on their last day of employment.

Retiring employees should coordinate their separation from employment with Oregon's Public Employee Retirement System (PERS) to ensure all requirements for retirement are met.

Health benefits will end on the last day of the month in which the employee worked.

Final payment of wages will be pursuant to ORS 652.140.

When an employee of the college retires under PERS, that employee's employment with the college will terminate. PERS-retired individuals are not guaranteed reemployment, but may apply for open positions with the college.

END OF POLICY

---

### Legal Reference(s):

[ORS Chapter 237](#)

[ORS Chapter 238](#)

[ORS Chapter 238A](#)

[ORS 243.303](#)

[ORS 342.120](#)

Consolidated Omnibus Budget Reconciliation Act of 1985, 29 U.S.C. §§ 1161-1169 (2018).

Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461 (2018).

OR. CONST., art. IX, §§ 10-13.

Copyrights, /Patents, and Other Intellectual  
Property  
~~Ownership of Materials Not  
Covered by College Collective Bargaining Agreements~~

The Board asserts the College's proprietary rights to publications, instructional materials, and other devices prepared by College employees during their paid work time. The Board also recognizes the importance of encouraging its professional staff to engage in professional writing, research, and other creative endeavors. Publications, articles, materials, models and other items produced by College personnel for College use with College time, money, and facilities as part of an employee's job responsibilities remain the property of the College.

The College will apply for copyrights and patents when deemed appropriate by the President. Employees will be expected to cooperate in the College's efforts.

1.

The ownership of any materials or processes developed on an individual's own time, off campus and at no expense to the College shall vest in and be copyrighted or patented, if at all, by the staff member and in their name.

2.

The ownership of materials or processes produced solely for the College and entirely at the College's expense shall vest in the College and be copyrighted and patented, if at all, in its name.

3.

In those instances where materials or processes are produced by a staff member with College support, by way of use of significant personal time, facilities or other college resources, the ownership of the materials or processes shall vest in and be copyrighted or patented, if at all, by the party or parties designated by written agreement between the parties, entered into prior to the production. Such written agreement shall make either a positive or negative statement with regard to any compensation to be paid to a staff member for such development.

In the absence of an agreement, the College staff member shall be deemed to have ownership.

It is the responsibility of the individual(s) involved in producing copyrighted or patented material to obtain, when appropriate, a signed release from all participants who may be recorded on film or tape. Release forms are available in the Human Resources Office.

[Both the college and faculty member shall retain the right to use and modify materials developed under items 2 and 3 of this policy without payment of royalties or fees. With respect to such use, the faculty member will have the right of first refusal of the College's request to upgrade or modify the materials to keep them current. If a faculty member declines the request, the College will have the right to modify the materials at its own expense and the faculty member will have the right to have his or her name removed from the materials.]



If projects produce Open Educational Resources (OER), open source software, and/or other openly licensed materials that would otherwise be property owned by the College, as specified in the third paragraph (above), the College and staff members agree to the open licensing of such materials in perpetuity.

Note: If an employee is covered under a collective bargaining agreement in which copyrights/patents are addressed, the collective bargaining agreement governs.

END OF POLICY

---

Legal Reference(s):

[ORS 332.745](#)

Copyrights, 17 U.S.C. §§ 101- 1332; 19 C.F.R. Part 133.

Patents, 35 U.S.C. §§ 1-376.

Copyrights/Patents: Ownership of Materials Not Covered by College  
Collective Bargaining Agreements - GCQBBA

1-1