

ADMINISTRATIVE PROCEDURES

Title: FAMILY AND MEDICAL LEAVE	Identification: 3.31
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PURPOSE

This procedure establishes guidelines for the implementation of family and medical leave pursuant to the provisions of the 1993 Family and Medical Leave Act (FMLA) as amended.

PROCEDURE

The Family Medical Leave Act (FMLA) provides employees with twelve (12) weeks of leave for family and medical reasons.

1. DEFINITIONS

The following definitions apply to this administrative procedure:

- A. Child - the biological, adopted or foster child, a stepchild, legal ward or a child of a person standing in loco parentis under the age of 18 unless they are incapable of self-care because of mental or physical disability that limits one or more life activities as those terms are defined under the Americans Disability Act (ADA).
- B. Parent - the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.
- C. In Loco Parentis - "in place of a parent." This term includes any individual who acted as a parent to an employee when h/she was a child.
- D. Domestic Partner - at least 18 years of age; not legally married or in any other domestic partnership; not related in any way that would prohibit marriage in the state of Florida; shares a permanent residence with employee as a member of the same household for a period of two consecutive years; and shares financial obligations and living expenses with employee.

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- E. Rolling Calendar Year - a rolling 12-month period measured backward from the date an employee uses any FMLA leave.

- F. Key Employee -an employee who is among the highest paid ten percent (10%) of all employees of the College.

- G. Intermittent Leave - leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. For non-faculty, a sick leave absence will be rounded to the nearest quarter hour, with a minimum of 15 minutes or be rounded in accordance with the designated Collective Bargaining Agreement.

- H. Reduced Schedule Leave - as a change in the employee's schedule for a period of time, from full-time to part-time.

- I. Covered Service Member - a current member of the Armed Forces, including a member of the National Guard or reserves, who has been rendered medically unfit to perform his or her duties due to a serious injury or illness incurred in the line of duty while on active duty.

- J. Health Care Provider - A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or any other person determined by the Secretary to be capable of providing health care services. . Others "capable of providing health care services" include only podiatrists; dentists; clinical psychologists; optometrists; chiropractors (with some limitations) licensed in the state and performing within the scope of his/her practice; nurse practitioner and mid-wives authorized to practice under state law and performing with the scope of their practice; and Christian Science practitioners listed with the First Church of Christ Scientist in Boston, MA; as well as doctors of medicine and osteopathy authorized to practice medicine or surgery; any health care provider recognized by HCC or HCC's group health plan benefits manager.

- K. Serious Medical Condition - illness, injury, impairment or physical or mental condition of a serious and long-term nature, resulting in recurring or lengthy absences Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take

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place at least twice a year. This does not include medical conditions of a temporary nature or those that do not require in-patient or continuous care. The term is not intended to cover short-term conditions generally covered by sick leave, voluntary treatment or cosmetic treatments that are not medically necessary.

A serious medical condition can involve:

- (1) any period of incapacity or treatment connected with in-patient care in a hospital, hospice or residential medical-care facility; or
- (2) a period of incapacity requiring an absence of more than three (3) calendar days from work, school, or other regular daily activities that involves continuing treatment by or under the supervision of a health care provider; or
- (3) any period of incapacity due to pregnancy or pre-natal care, to include bonding time for the mother and/or father; or
- (4) any absence to receive multiple treatments (including any period of recovery) from a health care provider for a condition that would likely result in a period of incapacity for more than three (3) calendar days if left untreated (i.e. chemotherapy, physical therapy); or
- (5) a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (i.e. stroke, terminal disease, etc.).

2. ELIGIBILITY

- A. An eligible employee is an employee who has been employed by the College at least 12 months prior to the commencement of the leave, and has worked at least 1,250 hours during the 12-month period prior to the leave. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations.
- B. Under FMLA an eligible employee is entitled to up to a maximum of twelve(12) weeks of unpaid, job-protected leave (including holidays and college breaks) during a rolling twelve (12) month period for a family-related or medical leave reason. In order to insure employees remain in a pay status during the leave,

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Employees are required to utilize their compensatory time, accrued sick time, frozen sick time and vacation time in this order, if applicable, during unpaid family and medical leave. After all accrued leave has been exhausted, the employee will be in a FMLA leave of absence without pay status.

- C. Employees are responsible for submitting leave forms at the end of the appropriate pay period. If the employee is not available, the supervisor will submit the leave form by the same pay period. Supervisors are responsible for monitoring the employee's leave balances. After all accrued leave has been exhausted, the employee will be in a FMLA leave of absence without pay status. It will be the responsibility of the supervisor to submit to HR the appropriate HRAR form placing the employee on leave without pay status.
- D. Married couples who are both employed by the College and eligible for FMLA leave may take a combined total of 12 week's leave during any 12- month period for the birth, adoption or legal placement of a child in foster care or to care for a child or parent with a serious health condition.
- E. Short-term Disability benefits may apply. Employees should consult with the Benefits Office for coordination of benefits.

3. QUALIFYING EVENTS

- A. A For the birth or care for a newborn.
- B. Placement of a child through adoption or legal placement of a child in foster care (informal foster care arrangements between relatives are not covered).
- C. For the employee's own serious health condition. Care for an employee's family member (spouse, domestic partner, child or parent) with a serious health condition.
- D. A qualifying emergency which occurs while the employee's spouse, child or parent on active duty or call to active military duty status in the National Guard or Reserves in support of a contingency operation to manage the service member's affairs.
- E. Care for a covered service member who has suffered a serious health condition in the line of duty if the employee has a qualified family relationship with the covered service member.

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4. NOTIFICATION

- A. In the case of the birth, adoption or placement of a child or in the case of a foreseeable medical condition, an employee must notify the supervisor and the Benefits Office, in writing or by phone, as soon as possible, but not less than thirty (30) days prior to the date when the employee's leave is scheduled to begin. For a bona fide emergency or other unforeseeable events, the employee must give notice and notify the supervisor as soon as possible.

- B. Written notification from an employee must be received before family and medical leave can be approved. To prevent disruption in the department, it is the employee's responsibility to consult with the supervisor regarding foreseeable leaves of absences.

- C. The Benefits Office will provide the employee with a written notice detailing the specific expectations and obligations of the employee and explaining the consequences if the employee does not meet these obligations. The notice will include the following:
 - (1) employee's financial obligations, if any, regarding premium payments to maintain health and voluntary benefits;
 - (2) medical certification and fitness-for-duty certification;
 - (3) employee's rights and obligations upon return to work; and
 - (4) medical release authorization form

5. CERTIFICATION

All eligible employees who request a leave for a serious health condition must present certification from their treating health care provider or the family member's treating health care provider prior to the leave being approved. An employee will have fifteen (15) days from the date of the leave request to furnish certification. The certification must contain the following information:

- A. the date on which the serious health condition began;

- B. the probable duration of the condition;

- C. all appropriate medical facts regarding the condition, including diagnosis and prognosis;

- D. a brief statement of the treatment plan prescribed for the condition; and

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E. if the leave is for the employee's serious health condition, the employee's health care provider must state that the employee is unable to perform the essential functions of the job; or if the leave is for the serious health condition of a family member, his/her health care provider must state that the employee is needed to care for that family member.

The College may request that an employee provide recertification every (30) days and under the following conditions:

- A. if the employee makes a request for an extension of the leave;
- B. if the employee or family member changes their health care provider;
- C. if the individual's serious health condition is subject to change;
- D. if the original certification appears invalid or incomplete; or
- E. if other factors surface that would require a recertification of the individual's serious health condition.

If the leave is an intermittent or reduced schedule leave for planned medical treatment, the certification must include a schedule for treatments and the expected duration of treatments.

The College may, at its own expense, require a second opinion concerning a serious health condition. If the two opinions conflict, the College may, at its own expense, require a third and binding opinion. The third opinion must be from a health care provider chosen or agreed to by both the employee and the College.

All medical information related to FMLA is confidential and will be kept in a separate, confidential file.

6. INTERMITTENT AND REDUCED-SCHEDULE LEAVE

An employee may take family medical leave intermittently or on a reduced- schedule only when medically necessary under the following circumstances with medical certification:

- A. The employee has a serious health condition which requires intermittent medical or reduced-schedule leave.
- B. The employee's spouse, child or parent has a serious health condition which

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requires intermittent medical or reduced-schedule leave.

- C. The employee is needed to care for a newborn or newly placed adoption or foster care child with the College's approval which requires intermittent medical or reduced-schedule leave.

7. REGULAR CONTACT

While on an approved leave, employees are responsible for maintaining weekly contact with the departmental supervisor. HIPAA regulations prevent discussion of medical information but the employee must keep the supervisor advised regarding expected return to work date and follow-up treatment dates.

8. EMPLOYMENT AND BENEFITS PROTECTION

An employee returning to work following an approved FMLA leave within the allowed 12 weeks will be able to return to the same classification held prior to the leave or an equivalent position with equivalent pay, status, benefits and other terms and conditions of employment.

The Benefits Department will be responsible for notifying an employee that their approved leave has expired and that the terms and conditions of their employment may be in jeopardy, if the College is not notified of their intent to return to work.

Core insurance coverage for an employee on FMLA leave remains in effect as if the employee were actively at work. If the employee is in a no pay status, failure to pay the insurance premiums for dependent and/or voluntary insurance will result in the termination of that insurance coverage.

After FMLA has been exhausted, the job position of the employee is no longer protected. The Benefits Office will notify the employee and his/her supervisor in advance and will coordinate with all involved parties as to what future actions should be taken.

An employee who is on unpaid FMLA leave will not continue to accrue paid leave.

9. RETURNING TO WORK

Failure to return to work on the designated return date following an authorized leave may subject the employee to disciplinary action. For a medical leave, an employee must present certification from their health care provider indicating that the employee is able to return to his/her job duties and list any restrictions, if applicable.

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An employee who fails to return from an approved unpaid leave will be required to reimburse the College for maintaining insurance coverage. However, if the employee does not return to work at the College for one of the following reasons, the reimbursement requirement will be waived:

- A. if the leave is for the employee's serious health condition and the employee is unable to return to work because of the continuation, recurrence or deterioration of the condition; or
- B. if the leave is for the serious health condition of a family member and the employee is unable to return to work because they are still needed to care for that family member.

For either reason indicated above, the employee must present certification from the health care provider stating that of either his/her health or the health of the family member is in such a serious condition that returning to work in the future is not possible.

Failure to provide such certification within thirty (30) days following a request will enable the College to recover health benefits and premiums paid during the period of the family and medical leave.

10. REINSTATEMENT PROVISION FOR KEY EMPLOYEES

A key employee is eligible for leave provided under FMLA. However, the following reinstatement provisions will apply to key employees, in addition to other provisions of this procedure:

- A. A key employee may be denied reinstatement to his/her job or a comparable position if the reinstatement would cause substantial and grievous economic injury to the College.
- B. The College will notify the employee of its intent to deny reinstatement to that key employee at the time the determination is made by the President.
- C. At the time the key employee is notified of the intent to deny reinstatement, the key employee will have the option of returning to work within a reasonable time set by Human Resources. The time to return will be determined by the circumstances surrounding the leave, such as the length of leave and the urgency of the need for the employee to return.
- D. If the key employee has been notified and opts not to return to work within

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the employer's specified time limits, then the employee will still be considered to be on leave until the conclusion of the leave period, even though the employee may not be reinstated by the College at the conclusion of the leave.

11. FMLA AND WORKER'S COMPENSATION LEAVE

Both leaves will run concurrently provided the reason for the absence is due to a qualifying illness or injury. Human Resources will properly notify the employee in writing that the leave for Worker's Compensation injury will be counted as FMLA leave.

12. QUALIFYING EMERGENCY LEAVE

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to active military duty or who is already on active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service.

The qualifying emergency must be one of the following:

- short-notice deployment (up to 7 days of leave)
- attend military events and activities
- arrange for child care and school activities
- address financial and legal arrangements
- attend certain counseling sessions
- periods of rest and recuperation for the service member (up to 5 days of leave)
- attending post-deployment activities (available for up to 90 days after termination of the covered service member's active duty status)
- other activities that arise out of service member's active duty or call to active duty, provided that the supervisor and employee agree, including agreement on timing and duration of the leave.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.

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The College will require certification of the qualifying emergency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

13. MILITARY CAREGIVER LEAVE

An eligible employee can take up to 26 weeks in any 12-month period. For this military caregiver leave, the College will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will not be deducted from the total of 26 weeks however will run concurrent with normal FMLA leave.

The College will require certification for the serious injury or illness of the covered service member. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

The College will accept "invitational travel orders" or "invitational travel authorizations" issued to a family member to join an injured or ill service member at his/her bedside in lieu of Form WH-385.

14. FLORIDA VICTIMS OF DOMESTIC VIOLENCE LAW (July 1, 2007)

Florida law mandates that the College provide up to three (3) days leave in a twelve (12) month period if an employee has been victimized by domestic violence. Normal FMLA eligibility does not apply.

- A. A The employee must have been employed by the College for at least three (3) months.
- B. The employee will use accrued leave for paid time off if available; otherwise it will be unpaid leave.
- C. The employee must provide the College with appropriate advance notice of the leave except in cases of imminent danger to the health or safety of the employee or a family member.
- D. Documentation required by the College includes:
 - (1) proof of acquiring medical or mental health care for either the employee and/or a family or household member; or

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- (2) a police report; or
- (3) proof of obtaining services from victims services organization; or
- (4) proof of seeking legal assistance such as an injunction, restraining order or judge's order.

The College will insure the confidentiality of all information relating to a leave for domestic violence.