

6Hx19-2.191 FAMILY AND MEDICAL LEAVE ACT

The purpose of this Board Rule is to establish Board policy for the administration of the Federal Family and Medical Leave Act

In accordance with the *Federal Family and Medical Leave Act*, (FMLA) the College offers to eligible employees up to 12 weeks of unpaid family and medical leave, subject to the terms and conditions of the Federal Law, the Rules and Regulations promulgated under the Federal Law, and the Rules of the District Board of Trustees of the College.

1. ELIGIBLE EMPLOYEES

All full-time employees, who have been employed by the College for at least 12 months, are eligible to request leave under the FMLA. Additionally, employees in regular positions who have worked at least 1,250 hours during the previous 12-month period are eligible to request this leave.

2. DEFINITIONS

The terms "**son**," "**daughter**," and "**child**" include the biological, adopted, legal ward, step- and foster children of the employee, as well as children for whom the employee stands in *loco parentis* and who is either under 18 years of age; or, if 18 or older, is incapable of self-care because of a mental or physical disability.

The term "**parent**" includes either a biological, adoptive, step and foster parent or someone who stood in *loco parentis* to an employee when the employee was a child. This term does not include parents "in law".

The term "**serious health condition**" shall mean conditions requiring either inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health care provider.

The term "**highly compensated employee**" shall mean an employee of the College who is among the highest paid ten percent (10%) of all employees of the College.

3. LEAVE PURPOSES

Eligible employees are entitled to leave for the following reasons:

- a) the birth and bonding of a son or daughter to the employee if the purpose of the leave is to care for the child;
- b) the adoption or placement for the foster care of a child with the employee;
- c) the care of a spouse, parent, or child who has a serious health condition;

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- d) a serious health condition of an employee that prevents the employee from performing the essential functions of his or her job;
- e) any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty."

4. DURATION AND TIMING OF LEAVE

A. Eligible employees may take up to 12 weeks of leave in any 12-month period. Such leave must be taken consecutively without interruption, unless the leave is for serious health condition of the employee, or the employee's spouse, parent, or child. In the case of the serious health condition of the employee, or the employee's spouse, parent, or child, the leave may be taken intermittently rather than consecutively so long as the total amount of leave taken does not exceed 12 weeks in any 12-month period.

B. In accordance with the National Defense Authorization Act for FY 2008, a "spouse, son, daughter, parent, or next of kin" may take up to 26 workweeks of leave to care for 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."

For purposes of Section 4.B., a "serious injury or illness" is defined as one incurred in the line of active duty which "may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating."

C. **Exigency Leave:** In cases where employee's spouse, son, daughter, or parent being on active duty or having been notified of an impending call or order to active duty in the armed forces in support of a contingency operation, the employee may be entitled to utilize leave in accordance with section 4.A. Exigent circumstances shall exist only where the call to active duty or deployment will cause significant disruption to the life of the employee. Employees shall provide notice to the College within a reasonable time of receipt of the order or call to active duty or deployment. The College will determine the existence of exigent circumstances on a case by case basis. Pay and benefits under Section 4.C. shall be in accordance with Section 5 of this Rule.

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5. PAY AND BENEFITS DURING LEAVE

In the case of a birth, adoption, or placement of a foster child, vacation leave and personal leave accrued must be exhausted for all or any part of that 12-week period. In the case of a serious health condition, the employee shall be required to take and receive payment for all accrued sick and vacation leave during the leave period, to the extent that such leave is earned and accrued. Thereafter, the employee shall not receive any compensation during the remainder of the leave.

In situations arising under Section 4.B., sick and/or vacation leave, if available, may be used for up to 26 weeks during this period.

The College shall maintain medical and life insurance coverage under its group health plan in the same manner as though the employee were not on leave. The employee shall be required to make all contributions to such coverage as would have been required had the employee not taken leave.

6. RESTORATION TO POSITION FOLLOWING LEAVE

With the exception of highly compensated employees every employee who returns from family and medical leave is entitled to either:

- a) restoration to the position the employee held at the commencement of the leave, or
- b) restoration to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

The College shall not be required to restore a highly compensated employee to the same or an equivalent position, if such a restoration would cause a substantial and grievous economic injury to the College.

7. NOTICE REQUIREMENTS

A. College:

The College shall post a notice in a public location regarding this Rule and information on how to file a claim of violation.

B. Employees:

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An employee who wishes to take a leave which is foreseeable, shall notify the College at least 30 days in advance of the commencement of the leave. If the nature of the leave requires that it begin in fewer than 30 days from the date that it becomes foreseeable by the employee, then the employee shall give as much advance notice as practicable under the circumstances.

8. MEDICAL CERTIFICATION

An employee who requests or takes leave under this Rule may be required to submit medical certification of the conditions that necessitate the leave. Such certification shall be made by the medical provider of the person suffering from the condition; and such certification should be required at the commencement of the leave, as well as periodically during the leave period. Such certification should include:

- a) the date on which the serious health condition commenced; and
- b) the probable duration of the condition; and
- c) the appropriate medical facts within the knowledge of the health care provider regarding the condition; and
- d) a statement that due to the employee's serious health condition, the employee is unable to perform work functions; or
- e) a statement that the employee is needed to care for a spouse, child, or parent with a serious health condition, as appropriate, accompanied by an estimate of the time needed for care.

If the College should have reason to doubt the validity of a certification, the College may, at its own expense, require the opinion of a second health care provider. In any case in which the first and second opinions differ, the College may, at its own expense, require the opinion of a third health care provider, designated or approved jointly by the College and the employee. The opinion of the third health care provider is final and binding on both the College and the employee.

Rule Adopted: 7/13/93; 11/14/95; P3/08/00; 11/19/01; ■10/18/04; 11/18/08; 09/25/18;
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Legal Authority:

General Authority: Florida Statutes: 1001.64; 1001.65; 1012.865

Other References:

Law Implemented: Title 3 U.S. Code 412 (1993 -Family and Medical Leave Act)
Florida Statutes: 1001.64 (1)(2)(4)(18)(43); 1001.65(1)(3)(16)(24);
1012.865

Proposer: Timothy L. Beard, President

■President's Cabinet Approval - Non-Substantive/Editorial