

<b>FLORIDA</b>	<b>OFFICIAL</b>
<b>POLYTECHNIC</b>	<b>UNIVERSITY</b>
<b>UNIVERSITY</b>	<b>POLICY</b>

<b>Subject/Title:</b> Family and Medical Leave of Absence
<b>FPU Policy Number:</b> FPU-6.0071P
<input checked="" type="checkbox"/> New Policy <input type="checkbox"/> Major Revision of Policy <input type="checkbox"/> Minor Technical Revision of Policy
<b>Date First Adopted:</b> February 3, 2017
<b>Date Revised:</b>
<b>Responsible Division/Department:</b> Human Resources
<b>Initiating Authority:</b> Mark Mroczkowski, VP and CFO

**A. APPLICABILITY/ACCOUNTABILITY:**

This policy applies to all University “eligible employees” as defined below.

**B. POLICY STATEMENT:**

The University promotes and adheres to the requirements of the Family and Medical Leave Act (FMLA) of 1993 (29 U.S.C. 825). The University accomplishes this goal through the implementation of the following:

1. All eligible employees are authorized to take a total of twelve (12) workweeks of job-protected, unpaid leave, or to substitute earned paid leave within a twelve (12) month rolling calendar year period.
2. Eligible employees are permitted to take the twelve (12) workweeks of leave, as set out above, for the following qualifying events:
  - a. Birth of a child
  - b. Care for newborn
  - c. Placement of a child with the employee for adoption or foster care
  - d. Care for a family member (child, spouse, or parent) with a serious health condition
  - e. Employee’s own serious health condition that makes the employee unable to perform the function of their job
  - f. Qualifying exigency due to the employee’s spouse, son, daughter or parent is a military member on active duty, who is called to a covered active duty, or has been notified of an impending call or order to active duty.
3. Eligible employees are permitted to take a total of twenty-six (26) workweeks in a twelve (12) month period to care for a covered servicemember with a serious injury or illness.
4. FMLA leave may be taken all at once, used on an intermittent basis, or as part of a part-time schedule.
5. An eligible employee who takes advantage of FMLA leave is still entitled to have their health benefits maintained while on leave, unless the employee fails to return to work when the FMLA leave ends. Failure to return to work may lead to disciplinary action up to and including termination of employment.
6. Eligible employees are entitled to return to the same or an equivalent position with equivalent pay when they return from FMLA leave, exceptions include reduction in force, layoff or other legitimate business decision.
7. Eligible employees who are married spouses, both employed at the University, are limited to a combined twelve (12) weeks of FMLA within a twelve (12) month period for the same qualifying event listed above and are limited to a combined twenty-six (26) weeks to provide care for a covered servicemember within a twelve (12) month period.

### C. DEFINITIONS:

1. **Covered Servicemember:** is either (1) current 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.
2. **Eligible employee:** to be considered an “eligible employee” (1) the employee must have been employed with the University for a total of at least twelve (12) months when the use of FMLA leave begins and (2) must have been employed at the University for at least 1,250 hours of service with the University during the previous twelve (12) month period. The University will not consider any period of previous employment with the University that occurred more than seven years before the most recent hiring of the employee.<sup>1</sup>
3. **In loco parentis:** does not require a biological or legal relationship but instead is an individual who has the day to day responsibility to care for and financially support a child, or, who had the responsibility when the individual was a child.
4. **Serious health condition:** is an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment from a health care provider.
5. **Spouse:** husband or wife with whom the eligible employee entered into marriage.
6. **Parent:** is a biological, adoptive, step or foster father or mother, or any individual who stood in loco parentis to the employee when the employee was a child. Parents “in-law” are not considered included in this definition.
7. **Son or daughter:** a biological child, adopted child, or foster child, stepchild, or legal ward of the employee, including a child for which the employee is in loco parentis. The child is either under 18 years of age or is 18 years of age or older, but is not capable of self-care because of a mental or physical disability (temporary or permanent) at the time the FMLA leave begins. However, when an eligible employee takes FMLA leave for a son or daughter on covered active duty or call to covered active duty status, the son or daughter may be of any age.
8. **Unable to perform the functions of the position:** occurs when a health care provider determines that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee’s position as defined by the American with Disabilities Act (ADA)(42 U.S.C. 12101)
9. **Qualifying exigencies:** includes, but is not limited to, short notice deployment, military events and related activities, financial and legal arrangements, counseling and rest and recuperation. The full list of qualifying exigencies, including examples and definitions, can be found at 29 U.S.C. §825.126 (Leave because of a Qualifying Exigency).

### D. PROCEDURES:

#### **Employee:**

##### *Notice*

A University employee who believes that they are entitled to FMLA leave must provide at least 30 days’ verbal or written need notice to the Human Resources Department prior to beginning the FMLA leave. All FMLA related absences must be submitted and processed through the University’s Human Capital Management (HCM) system in the “Time-Off”

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<sup>1</sup> Please review 29 U.S.C. 825.102 Definitions for the USERRA (Uniformed Services Employment and Reemployment Rights Act) and the applicable collective bargaining agreement exceptions to this seven year rule.

module. The submission of FMLA absence requests within the HCM module outlines the business process and includes an official and electronic approval of the absence. At a minimum, verbal notice may be given in unusual circumstances that may inhibit the employee from performing the electronic process. In those cases, please contact the Human Resources Department. Employees are encouraged to contact the Human Resources Department as early as possible to ensure that all required prerequisites are satisfied prior to the employee needing to use FMLA leave. If an employee is unable to provide 30 days' notice or more, due to medical emergency, change in circumstances, etc. then the employee will provide notice as soon as possible and practicable.

The need notice must include notification that the employee is seeking FMLA leave, the qualifying basis that makes this leave fall under FMLA leave, anticipated timing of the FMLA leave, and the anticipated duration of the leave.

An employee re-seeking FMLA leave based on a previously approved FMLA need must indicate that they are seeking FMLA leave under the previous qualifying reason.

#### *Medical Certification*

If the basis for an employee's FMLA leave is a medical condition, the employee will be required to submit a completed medical certification. The employee must provide a response to all request for medical certification within fifteen (15) calendar days of receiving the request. If an employee is unable to complete the requested medical certification within fifteen (15) calendar days, despite their due diligence, an employee should contact the Human Resources Department to obtain additional time to submit the completed medical certification.

An employee's failure to satisfy these requirements may cause a delay in the employee being deemed an eligible employee, result in a delay of the start of the employee's FMLA leave, and/or result in a denial of FMLA leave.

#### **Human Resources:**

##### *Review of Notice and Determination on Eligible Employee Status*

The Human Resources Department will review the request for FMLA and will perform additional inquiries, as needed, with the employee to ensure that the Human Resources Department has received all the details needed to make a determination of the employee's eligibility and to determine if the employee's request for leave falls under one of the approved categories where FMLA may be taken.

When an employee is requesting FMLA for a medical condition, the Human Resources Department will require the employee to provide a medical certification(s) to support the need for the leave. Within 5 (five) days of receiving need of FMLA notice (written or verbal) from the employee, the Human Resources Department will issue a Notice of Eligibility and Rights/Responsibilities form, which sets forth whether the employee is eligible for FMLA Leave and the employee's rights and responsibilities when using FMLA leave. The Human Resources Department will include the request for medical certification the anticipated consequences of an employee failing to provide adequate certification. The Human Resources Department will deny any FMLA request when the medical certification is requested and the employee fails to provide the form or to provide complete information on

the form. The Human Resources Department will review the submitted medical certification to determine whether the form is sufficient and complete. If the medical certification is incomplete and insufficient the Human Resources Department will provide written notice to the employee indicating what additional information is needed for the document to be complete and sufficient. The employee will have seven (7) calendar days to correct the deficiencies in the form. An employee's failure to correct the deficiencies may lead to a denial of the FMLA request.

Note: All medical certifications must be handled through the Human Resources Department. A supervisor is not permitted to contact a health care provider.

*Review of Notice and Determination of on Eligible Employee Status*

The Human Resources Department may request that an employee provide documentation to show proof a relationship.

*Determining in Loco Parentis*

The Human Resources Department will request documentation to support a determination of in loco parentis. Examples of situations in which FMLA leave may be based on an *in loco parentis* relationship include:

1. A grandfather may take leave to care for a grandchild whom he has assumed ongoing responsibility for raising if the child has a serious health condition.
2. An aunt who assumes responsibility for caring for a child after the death of the child's parents may take leave to care for the child if the child has a serious health condition.
3. A person who will co-parent a same-sex partner's biological child may take leave for the birth of the child and for bonding.

**Failure to Return to Work Following FMLA Leave.** If the employee does not return to work following the conclusion of FMLA leave, the employee may be considered to have voluntarily resigned from their position at the University.

**Compliance with FMLA.** The foregoing provisions are intended to comply with the Family and Medical Leave Act of 1993 and with regulations promulgated by the Department of Labor. To the extent that any provision in this policy conflicts with the Act or regulations, the Act and/or regulations shall control.

POLICY APPROVAL	
Policy No.: FPU-6.0071P	
_____	_____
Initiating Authority	Date
_____	_____
Policies & Procedures Review Committee Chair	Date
_____	_____
President/Designee	Date
Approved by FPU BOT, if required	_____
	Date
<b>EXECUTED SIGNATURE PAGES ARE AVAILABLE IN THE OFFICE OF THE GENERAL COUNSEL</b>	