

	FGCU POLICY 3.039	Responsible Unit: Human Resources
	Family and Medical Leave	

A. POLICY STATEMENT

The University (FGCU) is committed to compliance with the Family and Medical Leave Act of 1993 (FMLA). The purpose of this Policy is to provide employees a basic understanding of their rights and obligations under FMLA. To the extent the Policy is silent, the provisions of the federal Family and Medical Leave Act of 1993 (FMLA or the Act), as amended, will prevail.

B. REASON FOR POLICY

To ensure compliance with FMLA and consistent application to all University employees.

C. APPLICABILITY AND/OR ACCOUNTABILITY

This Policy applies to all eligible employees who meet the following requirements:

1. Have a minimum of twelve (12) months of employment with the University (need not be consecutive);
2. Have worked 1,250 hours at the University during the twelve (12) months prior to the start of FMLA leave. These hours must be actual work hours, not compensated hours. Notwithstanding, hours that an employee would have worked but for their military service are credited toward the employee’s required 1,250 work hours for FMLA eligibility; and
3. Have worked at a location where fifty (50) or more employees work at that location or within seventy-five (75) miles of it.

D. DEFINITION OF TERMS

1. *Child*: Biological, adopted, step-, or foster child of a person standing in *loco parentis* to the child who is under the age of eighteen (18) years of age, or eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability. A Child who is an active service member can be of any age. (“*In loco parentis*” means the individual who has or had day-to-day responsibility for the Child.)
2. *Continuing Treatment Test*:
 - a. A period of incapacity of more than three (3) consecutive, full calendar days plus

- treatment by a health care provider twice, or once with a continuing regimen of treatment;
- b. Any period of incapacity related to pregnancy or for prenatal care;
 - c. Any period of incapacity or treatment for a chronic serious health condition;
 - d. A period of incapacity for permanent or long-term conditions for which treatment may not be effective; or
 - e. Any period of incapacity to receive multiple treatments (including recovery from those treatments) for restorative surgery, or for a condition which would likely result in incapacity of more than three (3) consecutive, full calendar days absent medical treatment.
3. *Eligible Employee*: For purposes of this Policy, an Eligible Employee is an employee meeting the requirements in section C of this Policy.
 4. *Next of Kin*: Nearest blood relative.
 5. *Parent*: Biological, adoptive, step-, or foster care mother or father or someone who stands or stood in *loco parentis* to the employee when the employee was under the age of eighteen (18). Parents-in-law are not included under FMLA. (“In loco parentis” means the individual who has or had day-to-day responsibility for the Child.)
 6. *Periodic Visits*: For treatment of a chronic serious health condition, a periodic visit would occur at least twice a year.
 7. *Retaliation*: For purposes of this Policy, Retaliation occurs when an adverse action or threat of an adverse action is taken against an Eligible Employee for applying for, or taking approved leave under FMLA, or otherwise availing oneself of the protections afforded employees under FMLA.
 8. *Serious Medical Condition*: An illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.
 9. *Spouse*: A husband or wife as defined by the state law.

Additional terms applicable to FMLA will be defined by the Act and/or its corresponding regulations.

E. PROCEDURES

1. Entitlement

FMLA entitles Eligible Employees to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Such leave will run concurrent with employee's paid leave. Upon return from leave, employees must be restored to the same or equivalent position with equivalent pay, benefits, and other employment terms. Eligible Employees are entitled to twelve (12) workweeks of unpaid leave within a 12-month period for the following qualifying events:

- a. The birth of a Child and to care for the newborn within one (1) year of birth;
 - b. The placement with the employee of a Child for adoption or foster care, and to care for the newly placed Child within one (1) year of placement;
 - c. To care for the employee's Spouse, Child, or Parent who has a serious health condition;
 - d. A serious health condition that makes the employee unable to perform the essential functions of their job;
 - e. Any qualifying exigency as defined under FMLA arising out of the fact that the employee's Spouse, Child, or Parent is a covered military member on "covered" active duty; or
 - f. Twenty-six (26) workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the Eligible Employee is the service member's Spouse, Child, Parent, or Next of Kin.
2. Accounting for the Use of FMLA Leave in a 12-month Period

The University uses a "rolling" 12-month period to assess an employee's available FMLA leave entitlement rather than a calendar or academic year. This 12-month period is measured backward from the date an employee uses any FMLA leave. Under the rolling 12-month period, each time an employee takes FMLA leave, the remaining entitlement would be any unused balance of the 12 weeks that has not been used during the immediately preceding 12 months.

3. Use of Leave Accrual

- a. FMLA leave is unpaid; however, the University leave policies require employees to use accrued paid leave (annual, sick, compensatory, and personal) concurrent with the unpaid FMLA leave taken. The University also requires that the employee use accrued leave with pay prior to requesting leave without pay. The use of paid leave must meet the specific requirements set forth by University policies.
- b. While an employee is on FMLA leave, the University will continue to pay the employer portion of the employee's health insurance premium. The employee is

responsible for continuing payment of the employee portion of the premiums. The University will not pay for any other elected benefits.

- c. Leave may be taken on a continuous, intermittent, or reduced workday/workweek basis, or a combination thereof.
- d. Spouses who are both employed by the University may be limited to a combined total of twelve (12) weeks of leave during a 12-month period if the leave is taken to care for the employee's Parent with a serious health condition or for the birth or placement of a child; or
- e. Spouses who are both employed by the University may be limited to a combined total of twenty-six (26) workweeks of leave during a "single 12-month period" if military caregiver leave is taken to care for a covered service member with a serious injury or illness.
- f. For military caregiver leave, the "single 12-month period" begins on the first (1st) day the Eligible Employee takes military caregiver leave and ends twelve (12) months after that date, regardless of the method used by the employer to determine the employee's twelve (12) workweeks of leave entitlement for other FMLA-qualifying reasons.
- g. FMLA leave may be applied retroactively (as designated in the designation notice) and will run concurrently with any other paid leave.

4. Notice and Certification

- a. Employees are to provide thirty (30) days' advance written notice to Human Resources and their supervisor when the need is foreseeable; otherwise such notice must be given as soon as practicable. In no case may an employee's direct supervisor contact the employee's healthcare provider.
- b. For any requested FMLA leave for treatment, reasonable efforts should be made by the employee to schedule appointments that avoid disrupting unit operations.
- c. An employee using intermittent FMLA leave due to medical necessity should notify their supervisor as soon as they know that they will be unable to work. This notification should occur no later than the starting time of the employee's work in compliance with an employee's scheduled starting time, absent a unit call-off procedure, which should be followed by the employee. An employee must notify their supervisor on each day of absence unless other arrangements have been made.
- d. Intermittent FMLA leave will require recertification every six (6) months. Recertification may be required at any time if a health care provider determines the employee's medical condition has changed.

5. Documentation of a Qualifying Event

- a. The University requires Eligible Employees to provide a complete and sufficient medical certification to Human Resources to support a medical absence of three (3) consecutive workdays in a thirty (30) day period for a serious health condition. A request for FMLA leave must be substantiated with satisfactory documentation provided within fifteen (15) calendar days of the request for FMLA leave. If the FMLA leave is due to a serious health condition of the employee, the employee's immediate family member, or a covered service member, documentation must be submitted from an appropriate health care provider. Documentation will be either the Medical Certification of Health Care Provider for Employee's Serious Health Condition form or the Medical Certification of Health Care Provider for Family Member's Serious Health Condition Form. If the FMLA leave is due to adoption, foster care placement, or qualifying exigency, documentation must be submitted from the appropriate agency.
- b. If the certification is incomplete or unclear, the employee must be given seven (7) additional calendar days in most circumstances to provide more complete information. If the certification is still insufficient, the University's leave coordinator may contact the employee's health care provider for clarification or authentication of the employee's medical certification or deny the FMLA request.
- c. The University reserves the right to request a second opinion if the validity of a medical certification is questioned. If the first and second opinions differ significantly, the University may request that the employee obtain a final and binding third opinion of a jointly selected health care provider. The second and third opinions are done at University expense. The leave coordinator may request recertification when appropriate and permitted under the law but generally not sooner than thirty (30) calendar days from the date of the last certification.
- d. Upon return from FMLA leave for a personal serious health condition, the employee must present a dated fitness-for-duty certificate from the health care provider so long as notified of this requirement by the leave coordinator in the leave designation notice. The fitness-for-duty/return-to-work certificate must be dated and certify that the employee is able to return to work and can perform the essential functions of the job. The employee's return to work may be delayed until the certificate is submitted.

6. Access to University Systems and Email

While on continuous leave of absence under FMLA, access to University systems and email will be disabled. In extenuating circumstances, requests for access to University systems may be granted on a case by case basis and with Vice President approval. Access to University systems and email will be re-activated upon employee's return to work.

F. RETALIATION

Retaliation is prohibited under federal law and this Policy. Complaints of Retaliation are investigated by the Office of Institutional Equity and Compliance. A finding of Retaliation will result in disciplinary action up to, and including, termination.

Related Information

FGCU Regulation 1.003, Non-Discrimination, Anti-Harassment, and Sexual Misconduct

FGCU Policy 3.034, Sick Leave

FGCU Policy 3.047, Fitness for Duty

Authority

Family and Medical Leave Act (FMLA), 29 U.S.C. section 2601, et. seq.

History of Policy

New 05/16/13; Amended 01/13/16; Amended 12/19/16; Format Changed 09/10/19; Amended 07/21/21

APPROVED:

*s/Michael V. Martin
Michael V. Martin, President

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Date