FAMILY AND MEDICAL LEAVE

1. PURPOSE

The Family and Medical Leave Act of 1993 was passed by Congress to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity; to minimize the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons; and to promote the goal of equal employment opportunity for women and men.

2. DEFINITIONS

**Parent** - a biological or adoptive parent or an individual who stood in loco parentis (a person who is in the position or place of a parent) to an employee when the employee was a child.

**Child** - a son or daughter who is under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability and who is:
- a biological child;
- an adopted child;
- a foster child - a child for whom the employee performs the duties of a parent as if it were the employee's child;
- a step-child - a child of the employee's spouse from a former marriage;
- a legal ward - a minor child placed by the court under the care of a guardian; or
- a child of an employee standing in loco parentis.

**Spouse** - a husband or wife recognized by the State of North Carolina

**Serious Health Condition** - an illness, injury, impairment or physical or mental condition that involves:
- inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical facility, including any period of incapacity (defined to mean inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment for or recovery from, or any subsequent treatment in connection with such impairment; or
- continuing treatment by a health care provider involving one or more of the following: a period of incapacity as defined above of more than
• three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition that also involves
• treatment two or more times by a health care provider, by a nurse or physician’s assistant under the direct supervision of a health care provider, or a provider of health care services (e.g., physical therapist) under orders of, or on referral by a health care provider, or treat any period of incapacity requiring absence from work of more than three workdays that also involves continuing treatment by a health care provider; or
• treatment on at least one occasion resulting in a regime of continuing treatment under the supervision of a health care provider (course of prescription medication or therapy requiring special equipment to alleviate the health condition.
• any period of incapacity due to pregnancy or for prenatal care, even when the employee or family member does not receive treatment from a health care provider during the absence and even if the absence does not last more than three days (prenatal examinations, severe morning sickness).
• any period of incapacity or treatment due to a “chronic serious health condition” even when the employee or family member does not receive treatment from a health care provider during the absence and even if the absence does not last more than three days, which is defined as requiring periodic visits or treatment by a health care provider, continuing over an extended period of time, and which may cause episodic rather then continuing periods of incapacity.
• incapacity for a permanent or long-term condition for which treatment may not be effective.
• multiple treatments for restorative surgery or incapacity for serious conditions that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

**Health Care Provider** – a doctor of medicine or osteopathy who is authorized to practice medicine or surgery in the State of North Carolina or any other person determined by statute, credential or licensure to be capable of providing health care services.

**Workweek** - the number of hours an employee is regularly scheduled to work each week, including holidays.

**Reduced Work Schedule** - a work schedule involving less hours than an employee is regularly scheduled to work.

**Intermittent Work Schedule** - a work schedule in which an employee works on an irregular basis and is taking leave in separate blocks of time, rather than for one
continuous period of time, usually to accommodate some form of regularly scheduled medical treatment.

**12-Month Period** - a period beginning July 1 of each year and ending on the following June 30. Employees must be given 60 days notice of any change and must not lose any benefits because of a transition.

3. **ELIGIBLE EMPLOYEES**

**Permanent Employees** - An employee who has been employed with Piedmont Community College for at least 12 months and who has worked at least 1040 hours during the previous 12-month period. This entitles the employee to a total of 12 workweeks, paid or unpaid, leave during any 12-month period for one or more of the reasons listed below.

For the birth of a child and to care for the child after birth, provided the leave is taken within a 12-month period following birth.

For the employee to care for a child placed with the employee for adoption or foster care provided the leave is taken within a 12-month period following placement.

For the employee to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition; or

Because the employee has a serious health condition that makes the employee unable to perform one or more essential functions of the employee's position.

Leave without pay beyond the 12-week period or for employees not covered under the Family and Medical Leave Policy shall be administered under the Other Types of Leave Without Pay Policy (5.4.3). Under these provisions, employees must pay for health benefits coverage.

**Temporary Employees** - This policy does not cover temporary employees since the maximum length of temporary appointment is nine months; however, if, by exception, a temporary employee is extended beyond one year, the employee shall be covered if they had worked at least 1250 hours during the previous 12-month period. Any leave granted to a temporary employee shall be without pay. This also applies to any other type of appointment that is not permanent, including intermittent, if the employee worked at least 1250 hours during the previous 12-month period.

4. **LEAVE CHARGES**

It is the responsibility of Piedmont Community College to designate leave as FMLA leave, based on information provided by the employee. This must be done before the
leave starts. If an employee has not provided information sufficient to determine whether it is to designated as FMLA leave, Piedmont Community College shall, after a period of 10 workdays, request that the employee provide sufficient information to establish an FMLA-qualifying reason for the needed leave. This does not preclude Piedmont Community College from requesting the information sooner; at any time an extension is requested.

Periods of leave without pay (including leave without pay while drawing short-term disability benefits) count towards the 12 workweeks to which the employee is entitled.

If an employee is out on workers’ compensation leave drawing temporary total disability, the time away from work is not considered as part of the FMLA 12-week entitlement.

The agency cannot require an employee to use compensatory time for unpaid FMLA leave.

The employee has the following options for charging leave:

**Birth** - The employee may choose to exhaust available vacation and/or sick leave, or any portion, or go on leave without pay; except that sick leave may be used only during the period of disability. This applies to both parents.

**Adoption** - The employee may choose to exhaust annual leave, or any portion, a maximum of 30 days sick leave (see 5.4.6(d)), or go on leave without pay

**Illness of Child, Spouse, Parent** - The employee may choose to exhaust available sick and/or annual leave, or any portion, or go on leave without pay.

**Employee’s Illness** - The employee shall exhaust available sick leave and may choose to exhaust available annual leave, or any portion, before going on leave without pay. If the illness extends beyond the 60-day waiting period required for short-term disability, the employee may choose to exhaust the balance of available leave or begin drawing short-term disability benefits.

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5. **INTERMITTENT LEAVE OR REDUCED WORK SCHEDULE**

The employee may take leave intermittently or on a reduced schedule to care for the employee's child, spouse or parent who has a serious health condition, or because the employee has a serious health condition. There is no minimum limitation on the amount of leave taken intermittently.
If the leave is for child birth and birth related child care or for adoption, the College must agree to intermittent leave or a reduced work schedule.

If such leave is foreseeable, based on planned medical treatment, Piedmont Community College may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave.

Only the time actually taken as leave may be counted toward the 12 weeks of leave to which the employee is entitled when leave is taken intermittently or on a reduced leave schedule (For example, an employee normally works 40 hours each week. The employee is on a reduced work schedule of 20 hours per week. The FMLA leave may continue for up to 24 calendar weeks.)

If an employee works a reduced or intermittent work schedule and does not use paid leave to make up the difference between the normal work schedule and the new temporary schedule to bring the number of hours worked up to the regular schedule, the supervisor must submit in writing the change in the number of hours the employee is scheduled to work. This will result in an employee earning pay and leave at a reduced rate.

6. EMPLOYEE RESPONSIBILITY

The employee shall give in writing notice to the supervisor for leave requested under this policy. The employee must explain the reasons for the needed leave so as to allow Piedmont Community College to determine that the leave qualifies under the Act.

**Birth or Adoption** - The employee shall give Piedmont Community College no less than 30 days notice, in writing, of the intention to take leave, subject to the actual date of the birth or adoption. If the date of the birth or adoption requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

**Planned Medical Treatment** - When the necessity for leave to care for the employee's child, spouse or parent or because the employee has a serious health condition, the employee must give 30 days notice if practicable of the intention to take leave. It is mandatory that the employee consult with the supervisor prior to the request for FMLA.

**Medical Emergency** - In the case of a medical emergency, an employer cannot require written advance notice.
If the employee will not return to work after the period of leave, Piedmont Community College shall be notified in writing. Failure to report at the expiration of the leave, unless an extension has been requested, may be considered as a resignation.

7. CERTIFICATION

The employee shall provide certification in accordance with the provisions listed. If the employee does not provide medical certification, any leave taken is not FMLA leave.

For leave pursuant to this policy, Piedmont Community College may require that a claim for leave because of adoption be supported by reasonable proof of adoption.

Piedmont Community College may require that a claim for leave because of a serious illness of the employee or of the employee's child, spouse or parent be supported by a doctor's certification.

When the leave is foreseeable and at least 30 days notice has been provided, the employee should provide the medical certification before the leave begins.

When it is not possible to provide the medical certification before the leave begins, the employee must provide the requested certification to the College within the time frame requested by the College (which must allow at least 15 calendar days after the College's request), unless it is not practicable under the circumstances.

At the time the College requests certification, the College must also advise the employee of the anticipated consequences of and employee's failure to provide adequate certification. The College shall also provide the employee a reasonable opportunity to correct any incomplete information.

The Certification of Health Care Provider form will be used for obtaining medical certification, including second and third opinions.

Where Piedmont Community College has reason to doubt the validity of the certification, the College may require the employee to get the opinion of a second doctor designated or approved by the College. Where the second opinion differs from the opinion in the original certification provided, the College may require the employee to get the opinion of a third doctor designated or approved jointly by the College and the employee. The College may require that the employee get subsequent re-certifications no more often than 30 days. The second and third certification must be at the College's expense.

8. EMPLOYMENT AND BENEFITS PROTECTION
Reinstatement - The employee shall be reinstated to the same position held when the leave began or one of like pay grade, pay, benefits and other conditions of employment. Piedmont Community College may require the employee to report to the College at reasonable intervals on the employee's status and intention to return to work. The College also may require that the employee provide certification that the employee is able to return to work.

Benefits - The employee shall be reinstated without loss of benefits accrued when the leave began. No benefits will be accrued during the period of leave without pay.

Health Benefits - Piedmont Community College shall maintain coverage for the employee under the State's group health plan for the duration of leave at the level and under the conditions coverage would have been provided if the employee had continued employment. Any share of health plan premiums that an employee had paid prior to leave must continue to be paid by the employee during the leave period. The obligation to maintain health insurance coverage stops if an employee's premium payment is more than 30 days late. If the employee's failure to make the premium payments leads to a lapse in coverage, the employer must still restore the employee, upon return to work, to the health coverage equivalent to that the employee would have had if leave had not been taken and the premium payments had not been missed without any waiting period or pre-existing conditions. The College may recover the premiums if the employee fails to return after the period of leave to which the employee is entitled has expired for a reason other than the continuation, recurrence or onset of a serious health condition or other circumstances beyond the employee's control.

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9. INTERFERENCE WITH RIGHTS

Actions prohibited - It is unlawful to interfere with, restrain or deny any right provided by this policy or to discharge or in any other manner discriminate against an employee for opposing any practice made unlawful by this policy.

Protected Activity - It is unlawful to discharge or in any other manner discriminate against any employee because the employee does any of the following:

Files any civil action or institutes or causes to be instituted any civil proceeding under or related to this policy.

Gives, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided by this policy.
Testifies, or is about to testify, in any inquiry or proceeding relating to any provided under this policy.

10. ENFORCEMENT

A violation of or denial of leave requested pursuant to the Family and Medical Leave Act of 1993 is not a contested case and creates no right of grievance or appeal under the State Personnel Act. Violations can result in any of the following and are enforced by the U.S. Secretary of Labor:

- U.S. Department of Labor investigation, or
- Civil liability with the imposition of court cost and attorney’s fees, or
- Administrative action by the U.S. Department of Labor.

11. POSTING REQUIREMENT AND NOTICE PROVISIONS

Agencies are required to post and keep posted, in a conspicuous place, a notice explaining the FMLA provisions and providing information concerning the procedures for filing complaints of violations of the Act with the U.S. Department of Labor, Wage and Hour Division. Copies of the required notice may be obtained from local offices of the Wage and Hour Division. In addition, when an employee provides notice of the need for FMLA leave, the College shall provide the employee with notice detailing the specific expectations and obligations of the employee and explaining the consequences of a failure to meet these obligations.

For further information, see the Family and Medical Leave Act of 1993.

HISTORY NOTE: Effective July 1, 1994; Revised October, 2001