POLICY:

Employees with family responsibilities or with serious health conditions who require a temporary absence may request leave.

PROCEDURE:

I. General

A. Covered Leave

Under the following circumstances, the college will grant eligible employees leave for up to twelve workweeks of job protected leave during a twelve-month period:

- To care for the employee’s child after birth or adoption of a child or the foster care placement of a child
- To care for a “family member” of the employee if that individual has a serious health condition
- A serious health condition of the employee that renders the employee unable to perform his or her job.
- For incapacity due to pregnancy, medical care or childbirth

Employees are limited to a maximum of twelve weeks of paid or unpaid leave for any of these purposes.

If an employee is eligible to use accumulated sick leave, the employee may do so inclusive of the twelve weeks of family and medical leave. The employee may also utilize any accrued annual leave with the approval of the supervisor, inclusive of the twelve weeks of family leave. If the leave is for birth, adoption, or foster care placement, the leave must be completed within twelve months of the date of birth or placement.

Eligible employees whose spouse, son, daughter or parent who is on covered active duty or call to covered active duty status may use their 12 week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain
counseling sessions, attending post-deployment reintegration briefings and providing care for the military member’s parent with a serious health condition. Qualifying exigencies also include 15 days of Rest and recuperation (R&R).

FMLA also includes a special leave entitlement that permits eligible employees up to 26 weeks of leave to care for a covered service member during a single 12 month period.

B. The Twelve-Month Period—Rolling Twelve-month calendar

This is the retrospective 12-month period as measured backward from the date the employee began using FMLA leave.

To determine if an employee is eligible for FMLA leave during any given work week* on a “rolling year” basis, one looks back over the 12 months immediately preceding that week. If the employee has not utilized the equivalent of 12 weeks of FMLA-qualifying leave in the 12 months prior to the date in question, then the employee is eligible for that week of leave (assuming all other eligibility criteria are met). In utilizing a rolling year, this analysis may be conducted each week to determine continued eligibility.

*The fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. If, however, the institution’s business operations have ceased, and employees are generally not expected to report for work for one or more weeks (e.g., during the winter holiday break), those days do not count against the employee’s FMLA entitlement.

C. Spousal Exception

If a husband and wife both work for the college and are eligible for leave, they are only entitled to a combined twelve workweeks of leave taken for birth, adoption, foster care, and senior care for a parent or twenty-six weeks for the care of a family member who is a covered service member. The twelve weeks will be calculated in the same manner as leave for an individual employee. These limitations do not apply where the reason for the leave is the serious health condition of either the husband or wife or the serious health condition of a child.

D. Georgia State Law

Some employees are covered by Georgia state leave laws that are different than the Federal FMLA. The college will comply with both laws. Where Georgia state law is more favorable, the college will adhere to the provisions of that law.

E. Intermittent Leave

An employee taking unpaid leave for personal or family illness need not take such leave continuously and may take leave on an intermittent basis or by reducing the employee’s
scheduled work hours if the employee provides certification from the healthcare provider caring for the employee and/or family members that leave must be taken in that manner. If unpaid leave is not taken continuously, it will be deducted from the employee’s entitlement to leave in increments of one hour. Employees must make reasonable efforts to schedule leave planned for medical treatment so as not to unduly disrupt the employee’s operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

F. Part-time After Birth, Adoption or Foster Care Placement

Requests for intermittent or reduced schedule (part-time) leave after the birth, adoption, or foster care placement of a child will be considered on a case-by-case basis. These arrangements will be subject to the ability of the employee’s supervisor and the administration to ensure that work will be completed through scheduling changes or job-sharing and the employee’s willingness to alter schedules or work longer hours on an emergency basis, e.g. when a fellow employee is absent due to illness. The college reserves the right to refuse leave or to cancel any such arrangement on 30-days’ notice if the college concludes that the needs of the business require the employee’s presence on a full-time basis.

II. Definitions

A. “Family Member”

“Family Member” is defined in the policy to include the employee’s spouse, son, daughter, and parent. A “son” or “daughter” is any child under eighteen who is the biological child of the employee, who is adopted by the employee, or whom the employee supervises on a day-to-day basis and for whom the employee is financially responsible. A “son” or “daughter” is also a child over eighteen who is incapable of self-care because of a mental or physical disability. A parent is any individual who assumed day-to-day and financial responsibility for the employee when the employee was a child. An employee’s next of kin who is a covered service member is also a family member as indicated in Section 585 of the National Defense Authorization Act of July 1, 2008.

B. “Covered Service Member”

A covered service member is (1) a 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 an outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness;* or (2) a veteran who was discharged or released under conditions other than dishonorable discharge at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness*. 

*The FMLA definition of “serious injury or illness” for current service members and veterans are distinct from the FMLA definition of “serious health condition”.

The college will not permit leave under this policy to care for individuals who are not “family members.”
C. “Serious Health Condition”

“Serious Health Condition” is defined as an illness, injury, impairment or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee’s job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing condition requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits per year or one visit and a regimen of continuing treatment or incapacity due to pregnancy or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

D. “Healthcare Provider”

A “healthcare provider” is any doctor of medicine or osteopathy, podiatrist, optometrist, mental health provider, nurse practitioner, or nurse midwife performing within the scope of a practice as defined under state law. Christian Science practitioners and chiropractors are healthcare providers to the extent defined under regulations issued by the U.S. Department of Labor.

III. Eligibility

A. Minimum Eligibility Requirements

1. An employee is eligible if the employee has been employed for at least twelve months (or fifty-two weeks) by the college and has worked at least 1250 hours during the twelve-month period prior to the time leave would begin under this policy. The college will make the determination at the time of the leave request.

2. Hours are calculated based upon actual hours for which the employee was paid including overtime.

The college will use its records and hours paid for all hourly employees. In the case of exempt employees, the college will assume that any employee employed full-time for seven and one-half months meets the 1250-hours requirement. Exempt employees who have twelve months prior service but less than seven and one-half month’s full-time continuous service at the time leave is requested should include documentation of hours worked with their request.

*BSpecial hours of service eligibility requirement apply to airline flight crew employees.*

B. Work-Site Rules

Employees who work at any location which does not employ fifty employees and where there
are fewer than fifty employees within seventy-five miles will not be eligible for Family and Medical Leave unless state law requires otherwise.

IV. Procedures for Requesting Leave

A. Request for Leave

1. Procedure

All requests for family or medical leave should be initiated in writing by contacting the employee’s immediate supervisor and the Human Resources Department. If for any reason an employee does not wish to inform their supervisor of the reason for the leave or if an employee has questions about their supervisor’s response, they should contact the Human Resources Department.

2. Foreseeable Leave

If the need for family or medical leave is foreseeable, the employee must provide 30 days’ notice to the college. Leave may be denied if notice is unreasonably delayed. If leave is denied for lack of notice, the employee may designate leave to start 30 days after notice is given. When paid leave is used for FMLA leave, employees must comply with the employer’s normal paid leave policies.

3. Scheduling

If the leave is for the planned medical treatment of the employee or a family member or requires intermittent or reduced schedule leave, employees may be required by their supervisor to arrange a schedule or to reschedule appointments or treatments, subject to consent of the healthcare provider.

4. Unforeseeable Leaves

If the need for family or medical leave is not foreseeable, notice must be given by the employee as soon as possible and practicable and generally must comply with an employer’s normal call-in procedures. Employees are expected to promptly notify their supervisor and the Human Resources Department as soon as they learn of the need for leave. Except in the case of extreme medical emergencies, employees should contact their supervisor as soon as possible to request leave and to provide the expected duration of leave. In emergencies, the employee or a family member should contact the Human Resources Department to give the same information by telephone. Requests for leave should be submitted in writing as soon as possible. Absent good cause or medical emergency, written requests for leave should be submitted within three business days after the verbal request is made.

Except for medical emergencies, failure to call or notify a supervisor prior to a scheduled work day may be treated as an unexcused absence.

5. Additional Information

After receiving a request for leave, the Human Resources Department will provide additional
information regarding the procedures for obtaining leave, including any additional documents that may be required.

B. Proof

1. Medical Certification

The college may require proof of necessity for family or medical leave by a healthcare provider on forms provided by the Human Resources Department. The information required shall include:

- The date on which the serious health condition commenced.
- The probable duration of the condition.
- Appropriate sufficient medical facts within the knowledge of the healthcare provider that verify the extent to which the employee is unable to perform his/her job functions.
- That a family member is unable to perform daily activities.
- The need for hospitalization or continuing treatment by a health care provider.
- Circumstances supporting the need for military family leave.

Certifications must be submitted within fifteen working days of the date requested by the Human Resources Department.

If the employee returns a medical certification that is incomplete or insufficient, the employer must return it to the employee indicating in writing what is needed to cure the deficiencies. The employee then has seven days to correct the certification and return it to the employer.

If the certification is still unclear, the employer may contact the employee’s healthcare provider for clarification or authentication purposes. The employee must provide the healthcare provider with a HIPAA Authorization Disclosure to authorize this contact.

Employees must also inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified.

Employees may also be required to provide certification and periodic recertification supporting the need for leave.

Employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any information required as well as the employee’s rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Employers must inform employees if leave will be designated as FMLA protected and the amount of leave counted against the employee’s entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

2. Second Opinions

The college has the option of requiring the employee to get a second opinion from an independent medical provider selected by the college. The college will pay for the second opinion. If the two opinions conflict, the conflict may be resolved by a third opinion by a
provider approved by the college and the employee. The third opinion shall be considered final and binding. The college will pay for the third opinion.

C. Leave is Contingent on Eligibility

All employee requests for FMLA leave are contingent upon a determination by the college that the employee is eligible for FMLA leave. This includes a determination of eligibility and provision of medical certification. Leave is also contingent on any second or third opinions that may be required. Because these procedures may take time, it is possible that a determination may not occur until after the employee is on leave or has returned to work.

D. Transfer to Alternative Position

In all cases of intermittent and reduced schedule leave, the college reserves the right to require the employee to transfer to another position that better accommodates the employee’s need for leave and/or the college’s operations. This decision is at the sole discretion of the college.

E. Confidentiality

The college will keep confidential all information relating to requests for family or medical leave. This information will be used only to make decisions in regard to the provisions of this policy. Supervisors must submit all records to the Human Resources Department and should not retain any copies in their files.

V. Use of Sick Leave and Annual Leave

A. Substitution Options

Family leave shall be paid or unpaid leave. If an employee is eligible to use accumulated sick leave, the employee must do so inclusive of time for family and medical leave. The employee may also utilize any accrued annual leave with the approval of the supervisor, inclusive of time for family and medical leave. An employee may take unpaid FMLA leave before he or she has exhausted paid annual leave. The use of paid sick and annual leave in conjunction with unpaid FMLA leave must be approved at the time the FMLA leave is approved.

B. Unpaid Leave

Leave will be unpaid leave except as provided in this section. Exempt employees will have their pay docked on a prorated basis if they take FMLA qualifying leave and the total number of hours worked is less than the average number of hours worked the prior twenty weeks in accordance with the provisions of the Fair Labor Standards Act (FLSA).

Unpaid FMLA leave shall be treated the same as other unpaid leaves as far as merit pay, promotion, and tenure are concerned.

Merit Pay

Faculty members who are on leave including FMLA leave in excess of twelve weeks for the fall and spring semesters within a twelve-month period will not receive merit pay for that year’s
performance. Merit for staff and P & A employees may be prorated.

**Promotion**

A year during which an employee takes leave including FMLA leave in excess of twelve weeks for the fall and spring semesters within a twelve-month period will not be considered an entire academic year for promotion purposes. For staff employees in a role where time served in a position is a criterion for promotion, extended leave beyond twelve weeks may be a factor for eligibility for promotion.

**Tenure**

A year during which a faculty member takes leave including FMLA leave in excess of twelve weeks for the fall and spring semesters within a twelve-month period will not be considered full-time service for tenure purposes. (See Board of Regent’s Policy on Tenure and Criteria for Tenure, Regents Policy Manual 8.3.7.2.)

**VI. Benefits**

**A. Health Benefits**

During the approved leave, the college will maintain the employee’s coverage for health benefits on the same terms as if the employee continued to work as follows: the employee is required to continue to pay the employee’s portion of any health insurance premiums normally deducted from the employee’s paycheck and shall pay such amounts by tendering a check payable to Georgia Perimeter College.

If the employee fails to make the required payments, the college may decide at its sole discretion to continue coverage. If this is done, under most circumstances, the college will have a right to recover these amounts. The employee will be notified whether coverage will be continued.

All amounts due the college because of the unpaid health premiums provided during leave will be deducted from the employee’s pay upon return.

**B. Other Benefits**

Other benefits normally provided to an employee shall be provided only if permitted by the plan governing the provisions of benefits and if the employee makes any required co-payments or premiums. In accordance with existing college policies on unpaid leave, employees will not earn any vacation or sick leave while on unpaid FMLA leave. Employees on an intermittent or reduced-schedule leave will earn vacation and sick leave on a prorated basis.

**C. Reinstatement**

The college has the right, upon the employee’s return from leave, to refuse to reinstate any benefit or condition of employment that has been discontinued for all of the college’s employees.
VII. Reinstatement

A. General

An employee taking leave under this policy will be returned to the employee’s same position or to an equivalent position with equivalent pay, benefits and other employment conditions as determined by the college unless the employee would have been terminated in the absence of any leave (e.g. layoff, downsizing, or termination of a temporary job). Taking of leave will not result in any loss of benefits or conditions of employment accrued prior to the beginning of the leave period, except if the employee is unable to use vacation time because of policy restriction (e.g. the employee returns after the end of the calendar year and has greater than 360 hours vacation).

B. Fitness-For-Duty Examinations

All employees absent for more than five consecutive working days must provide a physician’s note stating they are released to work. The college will also require a Fitness-for-Duty Certification prior to restoration for employees absent from work for more than five consecutive working days if there is any question regarding the employees’ ability to perform the job safely. The college reserves the right to make additional medical inquiries and/or require follow-up examinations at its expense to ensure that employees can safely perform all the functions of the job. These medical inquiries will be conducted in accordance with the college’s policy with regard to the Americans with Disabilities Act.

C. Key Employee Exception

If an employee has a gross income within the top ten percent of the college’s employees within seventy-five miles of the employee’s work site during the calendar year in which leave is taken, the college reserves the right not to restore the employee to his or her prior position with the college if the college will suffer substantial and grievous harm because of the restoration. At the time that leave is granted under this policy, the college will inform the employee that the employee is within the top ten percent and also explain the possible consequence that restoration may be denied.

If the college determines during the employee’s leave that the employee is not to be restored to employment, the employee will be notified immediately and given the opportunity to return from leave to his or her position. If the employee does not return from leave, the employee can petition for reinstatement at the end of the leave period. The college will notify the employee by certified mail if the employee will not be restored due to the substantial and grievous impact restoration would have on the college.

D. Periodic Reporting

Employees on leave are required periodically to report on their status and intent to return. During leave, the college also may require that an employee recertify the medical condition that caused the employee to take leave when the college obtains information that casts doubt on the
continuing validity of the employee’s original certification, when the employee requests an extension of leave, or when circumstances have changed.

E. COBRA

When an employee notifies the college that he or she is not returning from leave, the Human Resources Department shall terminate the employee’s health benefits, and he or she shall no longer have a right to restoration to the same or equivalent position. The employee shall be entitled to continuation of health benefits only in accordance with the Consolidated Omnibus Budget Reconciliation Act (COBRA) and the provisions of the health plan.

F. Repayment of Premiums

Employees who return to work will meet with the Human Resources Department to arrange an appropriate repayment schedule for any employee premiums or co-payments made by the college during leave.

Upon receiving notice that the employee is not returning to employment with the college or should the employee simply fail to return or return to employment with the college for less than thirty days after leave has ended, the employee shall owe the college the cost of any benefits provided during leave, including both the employer and any employee premiums and co-payments for health benefits. No such amount shall be owed if there is a recurrence or onset of a serious health condition or, in the opinion of the college, there is a change of circumstances beyond the employee’s control. The benefits of a key employee who is not restored shall not be terminated prior to the end of leave, and the employee shall not be responsible to the college for such benefits other than the normal employee contributions.

If an employee does not return to work under circumstances where repayment can be required, the employee may be required to repay all premiums within sixty days after receiving notice from the college of the amount owed.

G. Failure to Return to Work

Employees who fail to return work after FMLA leave may be treated as having voluntarily terminated their employment.

VIII. General Provisions

A. Administrator-Georgia Perimeter College is the sole administrator of this policy and as such is the exclusive interpreter of its terms. All provisions of this policy shall be interpreted consistent with the Family and Medical Leave Act of 1993.

B. Changes - The college reserves the right to modify or terminate this policy at any time.

C. No Employment Rights- This policy does not create any employment rights to any individual other than specifically stated in the policy.

D. Limitations-Except as otherwise stated, this policy is not intended to create any rights greater
than those conferred on employees by the Family and Medical Leave Act of 1993.

E. State Laws- If Georgia State laws are more generous than FMLA, Georgia Perimeter College will comply with those laws.

F. Unlawful Acts By the Employer-FMLA makes it unlawful for any employer to interfere with, restrain or deny the exercise of any right provided under FMLA and to discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

G. Enforcement-An employee may file a complaint with the U.S. department of Labor or may bring a private lawsuit against the employer. FMLA does not affect any Federal or state law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

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