R E V I S E D A G E N D A

PRESIDENTS MEETING
Tuesday, May 13, 2008 – 9:00 A.M. (CT)
TBR Board Room

1. Legislative Update (Vice Chancellor David Gregory)

2. Regents Award for Excellence in Philanthropy – Selection Process – Proposed Revision (Vice Chancellor David Gregory)

3. EPA Issues (Jerry Preston)

4. Proposed Revision to TBR Policy 1:07:00:00—*General Policy on Alcoholic Beverages* (Vice Chancellor Paula Myrick Short) – *See Attached*

5. AAUP Adjunct Pay Briefer- May 2008 (Vice Chancellor Paula Myrick Short and Vice Chancellor Bob Adams) – *See Attached*

6. Discussion of Flexible Work Schedules on Campuses (Vice Chancellor Bob Adams)

7. Proposed Revision to TBR Policy 5:01:01:14 - Family Medical Leave Act (Vice Chancellor Bob Adams) – *See Attached*

8. Background Investigations for Presidents and Directors (Vice Chancellor Bob Adams) – *See Attached*

9. Talent Management (Succession Planning) and Banner/People Admin (Vice Chancellor Bob Adams) – *See Attached*

10. System-wide Internal Audit External Peer Review (Tammy Gourley) – *See Attached*

11. Teach Grant Program (President Karen Bowyer) – *See Attached*

PRESIDENTS QUARTERLY MEETING

DATE: May 13, 2008

AGENDA ITEM: Approval of Proposed Revisions to TBR Policy 1:07:00:00—*General Policy on Alcoholic Beverages* Under Academic Affairs

ACTION: Voice Vote

PRESENTER: Dr. Paula Myrick Short

BACKGROUND INFORMATION:

Proposed revisions to TBR Policy 1:07:00:00—*General Policy on Alcoholic Beverages* are being presented for approval. The full text of the policy and the proposed changes appear in the following pages.

TBR POLICY 1:07:00:00

Subject: General Policy on Alcoholic Beverages

The President of each four and two-year institution is authorized to, and may from time to time designate a place on property owned or controlled by the institution where alcoholic beverages may be served by alumni and foundation organizations at a function or event sponsored by said organization.

This area shall not be in classrooms, labs, faculty or administrative offices, residence halls, student dining halls, student gathering areas, outdoor public areas, or athletic facilities accessible to the public. Furthermore, under Policy 3:05:01:01 the use and/or possession of alcoholic beverages by students are prohibited on property owned or controlled by the institution.

The sale of alcoholic beverages at the designated place is prohibited. "Sale" means any transfer, trade, exchange, or barter, in any manner or by any means, for consideration, including, but not limited to, requiring fees or the purchase of tickets for admission to the area or event at which alcoholic beverages will be served. State funds may not be used for the purchase of alcoholic beverages.

Notwithstanding the provisions noted above, the sale of alcoholic beverages shall be permitted at the Kemmons Wilson School of Hospitality and Resort Management hotel and conference facility and the Fogelman Executive Center, both of which facilities are operated in connection with the academic program known as the Kemmons Wilson School of Hospitality and Resort Management. Compliance with all applicable laws and regulations shall be required.

[This policy shall not be construed as prohibiting the use of alcoholic beverages as cooking supplies in Hospitality Management/Culinary Arts academic coursework where said beverages are not consumed as is, but, in which, the beverages are used solely in the cooking process in a manner that is consistent with standard culinary practices.]

Source: TBR Meeting June 20, 1997; March 15, 2002

TBR POLICY 1:07:00:00

Subject: General Policy on Alcoholic Beverages

The President of each four and two-year institution is authorized to, and may from time to time designate a place on property owned or controlled by the institution where alcoholic beverages may be served by alumni and foundation organizations at a function or event sponsored by said organization.

This area shall not be in classrooms, labs, faculty or administrative offices, residence halls, student dining halls, student gathering areas, outdoor public areas, or athletic facilities accessible to the public. Furthermore, under Policy 3:05:01:01 the use and/or possession of alcoholic beverages by students are prohibited on property owned or controlled by the institution.

The sale of alcoholic beverages at the designated place is prohibited. "Sale" means any transfer, trade, exchange, or barter, in any manner or by any means, for consideration, including, but not limited to, requiring fees or the purchase of tickets for admission to the area or event at which alcoholic beverages will be served. State funds may not be used for the purchase of alcoholic beverages.

Notwithstanding the provisions noted above, the sale of alcoholic beverages shall be permitted at the Kemmons Wilson School of Hospitality and Resort Management hotel and conference facility and the Fogelman Executive Center, both of which facilities are operated in connection with the academic program known as the Kemmons Wilson School of Hospitality and Resort Management. Compliance with all applicable laws and regulations shall be required.

This policy shall not be construed as prohibiting the use of alcoholic beverages as cooking supplies in Hospitality Management/Culinary Arts academic coursework where said beverages are not consumed as is, but, in which, the beverages are used solely in the cooking process in a manner that is consistent with standard culinary practices.

Source: TBR Meeting June 20, 1997; March 15, 2002

PRESIDENTS QUARTERLY MEETING

DATE: May 13, 2008

AGENDA ITEM: Proposal to Increase Adjunct Pay

ACTION: Voice Vote

PRESENTER: Vice Chancellor Paula Myrick Short
and Vice Chancellor Bob Adams

BACKGROUND INFORMATION:

Proposed revisions to TBR adjunct instructor pay rates are being presented for approval. Further information appears on the following page.

Fair Compensation for Quality Instruction
From: The Tennessee Conference of the American Association of University Professors (AAUP)
To: The Tennessee Board of Regents (TBR)

By the Tennessee AAUP Committee on Part-time and Non-tenure-track Appointments
January 2008, Revised May 2008

The Tennessee Conference of the AAUP agrees with our national organization when it asserts, "Excessive use of, and inadequate compensation and professional support for, such contingent faculty exploits these colleagues and undermines academic freedom, academic quality, and professional standards. It is essential to improve the compensation and professional support opportunities for contingent faculty."

Though we recognize that some level of part-time instruction is necessary to the efficient operation of each TBR institution, we also emphasize the principle stated in TBR General Personnel Policy 5:01:00:00, that "the president or director shall insure that all employees shall be paid equal wages or salaries for equal work in positions the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions." Because guidelines setting maximum pay levels for part-time faculty have not been adjusted since 1998, and because fair rates of compensation are more likely to attract and retain competent classroom instructors, we urge the TBR to amend personnel guideline P-050 to allow the maximum part-time faculty pay rates listed below.

We further urge each TBR campus to verify its compliance with the directive in guideline P-50 to set "criteria for assigning part-time faculty to the four levels" according to "such factors as educational qualifications, market differentials, and professional experience."

The proposed maximum levels in TBR guideline P-50 would be as follows:

Level	Semester Rate per Credit Hour Maximum
1	$850
2	900
3	950
4	1000

- We urge each campus to set rates that best reflect local market and cost-of-living conditions, as well as its own budgetary constraints.

- We also request that TBR conduct a system-wide review of adjunct salaries every three (3) years to ensure that adjunct salary rates remain appropriate and competitive. Ideally, TBR would adjust the adjunct pay scale to keep pace with the cost-of-living raises granted to all other state employees.

PRESIDENTS/DIRECTORS QUARTERLY

DATE: May 13, 2008 – Presidents Meeting
May 14, 2008 – Directors Meeting

AGENDA ITEM: **Revision to TBR Policy 5:01:01:14**
Family Medical Leave Act (FMLA)

ACTION: Requires Vote

PRESENTER: Vice Chancellor Bob Adams

BACKGROUND INFORMATION:

The National Defense Authorization Act for FY 2008 was enacted on January 28, 2008 which made significant changes to the Family and Medical Leave Act. TBR Policy 5:01:01:14 has been revised to reflect the current law which includes qualifying exigency and service member family leave. The proposed revisions have been reviewed and are recommended for approval by the Human Resources Officers Committee and the Chief Business Officers Sub-Council.

POLICY NO. 5:01:01:14

SUBJECT: Family and Medical Leave

In compliance with the Family Leave Act of 1993, it is the policy of the Tennessee Board of Regents to provide eligible male and female employees up to twelve workweeks of leave during a twelve month period for specified family and medical reasons, to provide continued health insurance coverage during the leave period and to insure employee reinstatement to the same or an equivalent position following the leave period. For purposes of this policy, "State" shall be defined as any State agency, the Tennessee Board of Regents System, and/or the University of Tennessee System.

I. Employee Eligibility

A. In order to be considered "eligible" under Family Medical Leave Act (FMLA or the Act) guidelines, an employee must (1) have worked for the State for at least 12 months and (2) have worked at least 1,250 hours during the year preceding the start of the leave.

B. The determination of whether an employee meets the eligibility criteria for receiving FMLA leave is based on the amount of service (including prior service) possessed by the employee as of the date the leave actually begins.

C. This policy includes both regular and temporary employees. However, the institution/technology center/Central Office is not obligated to restore an employee hired for a specific term or to complete a project.

D. The right to take FMLA leave applies equally to male and female employees.

E. This policy contains no exceptions for "key employees" (e.g., a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees of the institution/technology center/Central Office).

The 12 months of required work with the State do not have to be consecutive in order for an employee to be eligible. If an employee is maintained on the payroll for any part of a week, that week is considered a week of employment, with 52 weeks of such employment considered equal to 12 months.

In determining "hours worked" for the purposes of FMLA eligibility, all hours actually worked by an employee (including overtime hours) should be calculated. Annual and sick leave hours which have been used during the 12-month period preceding the start of the leave are not counted as hours worked. In situations where an employee is considered "exempt" from the overtime provisions of the Fair Labor Standards Act (FLSA) and no record of overtime hours worked has been maintained, the employee is presumed to have met the 1,250 hour requirement if he/she has worked for the State for at least twelve months. For purposes of this policy, full-time faculty satisfy the 1,250 hour test.

The determination of eligibility must be made as of the date the leave commences or within two business days (absent extenuating circumstances) of when notification of an FMLA qualifying event has been received. If an employee gives notice that leave is required before he/she meets the eligibility criteria, he/she must either be (1) provided with confirmation of when eligibility will be attained, based upon a projection, or (2) be advised when the criteria have been met. Eligibility that is confirmed at the time the notice is received may not be subsequently challenged. In the latter case, the notice of leave will remain current and outstanding until the employee is advised that eligibility has been attained. If notice of leave has been given and confirmation of eligibility is not given prior to commencement of the leave, the employee is deemed eligible; FMLA leave may not be denied. In addition, if notice of the need for leave has not been given more than two business days prior to commencement of the leave, a determination of eligibility must be confirmed within two business days following notice. If such a determination is not provided, the employee will be considered eligible.

Leave requests for regular employees who do not satisfy the FMLA eligibility requirements shall be processed in accordance with the appropriate Tennessee Board of Regents leave policies.

II. Leave Entitlement - FMLA Qualifying Events

A. The birth of a son/daughter and to care for the newborn child;

In addition to leave taken after the birth of a child, FMLA leave may be taken by an expectant mother for the purpose of prenatal visits, pregnancy-related symptoms, and in situations where a serious health condition prevents her from performing her job duties prior to the child's birth.

B. The adoptive or foster care placement of a son or daughter with the employee;

FMLA leave may be taken prior to an adoptive or foster care placement if the leave is necessary for the placement to proceed. This would include granting leave for required counseling sessions, court appearances, and legal or medical consultations.

Adoption: There is no requirement in the Act that the source of an adoption be from a licensed adoption agency in order for an employee to be eligible for FMLA leave. (See Section II, C, for age limitations for son/daughter.)

Foster Care: This is defined as "24-hour care for children in substitution for, and away from, their parents or guardian." The Act requires that this placement be made by or in agreement with the State and that State action be involved in the removal of the child from parental custody. Foster care may include children of relatives placed within the employee's home by the State.

C. To care for the employee's spouse, son, daughter, or parent with a serious health condition, as defined below:

Formatted: Right: 18 pt

Spouse: Husband or wife as defined or recognized under Tennessee law for purposes of marriage.

Parent: Biological parent or an individual who currently stands or stood in place of an absent parent to an employee when the employee was a child as defined in son/daughter below. The definition does not include parents-in-law.

Son/Daughter: Biological, adopted, foster child, stepchild, legal ward, or child of a person standing in place of an absent parent, who is either under age 18 or age 18 or older and "incapable of self-care because of a mental or physical disability."

An individual "incapable of self-care" means that the individual requires active assistance or supervision in performing 3 or more activities of daily living.

An individual with a "physical or mental disability" means that the individual has an impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR part 1630, issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., define these terms.

For purposes of confirmation of family relationship, the president/director/Chancellor/or his/her designee (hereafter referred to as "Designator") may require the employee giving notice of a need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, a birth certificate, a court document, etc. After examination, the employee is entitled to the return of the official document.

D. The employee has a serious health condition resulting in his/her inability to perform job functions.

An employee is unable to perform the functions of his/her position if the health care provider finds that he/she is (1) unable to work at all or (2) is unable to perform any one of the position's essential functions within the meaning of the American with Disabilities Act (ADA), 42, USC 12101 et seq., and the regulations at 29 CFR Sec. 1630.2(n). For FMLA purposes, the essential functions must be determined with reference to the employee's position when the notice is given or the leave commenced, whichever is earlier.

An employee absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment. The Designator may provide a copy of the essential functions of the employee's position for the health care provider to review when requiring certification.

E. A “Qualifying Exigency” arising out of the fact that the spouse, or a son , daughter or parent of the employee is on active duty(or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.(In accordance with

Formatted: Right: 18 pt

The Family and Medical Leave Act of 1993, as amended by Section 585 of the National Defense Authorization Act for FY 2008.)

F. Service Member Family Leave - an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of 26 work weeks of leave during a 12-month period to care for a service member who has incurred an injury or illness in the line of duty while on active duty in the Armed Forces provided that such injury or illness may render the service member medically unfit to perform duties of the member's office, grade, rank or rating. (In accordance with The Family and Medical Leave Act of 1993, as amended by Section 585 of the National Defense Authorization Act for FY 2008.)

During the 12 month period an eligible employee shall be entitled to a combined total of 26 work weeks of leave under paragraphs F and A through E.

III. FMLA definition of "a serious health condition"

The FMLA defines a "serious health condition" as an illness, injury, impairment, or physical or mental condition involving any of the following:

A. A period of incapacity (inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment, or recovery) or treatment connected with inpatient care (e.g., overnight stay) in a hospital, hospice or residential medical care facility.

B. Continuing treatment by a health care provider (hereafter referred to as "HCP"). A serious health condition involving continuing treatment by an HCP includes any one or more of the following:

(1) A period of incapacity of more than 3 consecutive days and any subsequent period of treatment or period of incapacity relating to the same condition, that also involves:

(a) Treatment two or more times by an HCP, nurse, or physician's assistant under direct supervision of an HCP, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, an HCP; or

(b) Treatment by an HCP on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider.

(2) Any period of incapacity due to pregnancy/prenatal care. Does not require treatment from a health care provider for each absence (e.g., morning sickness).

(3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition which may be defined as one which:

Formatted: Right: 18 pt

(a) Requires periodic visits for treatment by any of the HCP's listed Section IV. (b) Continues over an extended period of time (including recurrent episodes of a single underlying condition). (c) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.) Such conditions require the continuing care of an HCP but do not always require active medical treatment.

C. A period of incapacity which is permanent or long-term due to a condition for which there may be no effective treatment (e.g., Alzheimer's, severe stroke, or terminal stages of a disease.) Employee does not have to be receiving active treatment but must be under the continuing care of an HCP.

D. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider either for restorative surgery after an accident/injury or for condition that would likely result in a period of incapacity of more than three consecutive calendar days without intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

Treatment of a serious health condition includes (but is not limited to) examinations to determine the existence of such condition and to evaluate the condition. However, treatment does not include routine physical, eye, or dental examinations. A regimen of continuing treatment may include a course of prescription medication (e.g., antibiotics) or therapy requiring special equipment to resolve or alleviate the condition (e.g., oxygen). It does not include taking over-the-counter medications, bed rest, drinking fluids, exercise, etc. initiated without a visit to an HCP.

The following conditions do not usually meet the definition of a serious illness unless hospitalization or complications occur: cosmetic surgery, common colds, flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, and routine dental/orthodontia/periodontal conditions.

Restorative dental surgery, plastic surgery after an injury or removal of cancerous growths, and mental illness resulting from stress or allergies may qualify as serious health conditions only if all the other conditions of the definition are met.

Substance abuse may be a serious health condition if all the other conditions of the definition are met. However, FMLA leave may be taken only when treatment for the substance abuse is being provided by an HCP or a provider of health care services on referral by an HCP.

IV. FMLA definition of a "health care provider" (HCP)

A "health care provider" includes the following: (1) A doctor of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices; (2) any other person determined by the U.S. Secretary of Labor to be capable of providing health care services.

Others "capable of providing health care services" include only:

Formatted: Right: 18 pt

(1) podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice under state law and performing within the scope of their practice as defined under state law;

(2) nurse practitioners, nurse midwives, and clinical social workers authorized to practice under state law and performing within the scope of their practice as defined under state law;
(3) Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts. Employees receiving treatment from a Christian Science practitioner may not object to any requirement by the Designator to submit to examination (not treatment) to obtain a second or third certification from an HCP other than a Christian Science practitioner except as otherwise provided under applicable State or local law.

(4) Any HCP from whom an employer or the employer's group health plan's benefits manager will accept certification of a serious health condition to substantiate a claim for benefits.

(5) An HCP listed above who practices in another country, other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

The phrase "authorized to practice in the State" as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions without supervision by a doctor or other HCP.

V. Determination of the 12 Work Week Period for FMLA

A. Limitations on Length and Duration

1. The right to take FMLA leave began on August 5, 1993, the effective date of the Family and Medical Leave Act. Any leave taken prior to that time could not be counted against an employee's twelve week entitlement for the year.

2. Eligible employees are entitled to up to a total of twelve workweeks of leave during a twelve month period. The initial twelve month period starts on the date the employee's FMLA leave first begins. A new twelve month period would begin the first time FMLA leave is taken after completion of any previous twelve month period. For example, an employee who first uses FMLA leave on October 7, 1993, would have their twelve month period begin on that date and continue through October 6, 1994. If this employee subsequently needed to use FMLA leave starting on December 2, 1994, a new twelve month period would be established from that date forward through December 1, 1995.

3. If the current method for defining twelve work weeks in a twelve-month period is changed, employees shall be given a 60-day notice. The transition shall afford the full benefit of 12 weeks under whichever method affords the greatest benefit to the employee. New methods may not be implemented to circumvent the FMLA's leave requirements.

Formatted: Right: 18 pt

4. A holiday that occurs within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. Exception: If the institution/technology center/Central Office is temporarily closed for work for one or more weeks (e.g., closing for the Christmas/New Year holiday, summer breaks), those days do not count as FMLA leave.

B. Limitations on FMLA leave entitlement for the birth of a child or adoption or foster care placement

Leave entitlement for the birth or for adoption or foster care placement expires at the end of the twelve month period beginning on the date of the birth or placement. FMLA leave for these reasons must be concluded within this time period.

C. FMLA leave limitations when both spouses are State employees

1. Spouses who are both employees of the State are limited to a combined total of twelve weeks of FMLA leave during a twelve month period if the leave is taken for the following reasons: (1) birth of a child or for care of the child after birth; (2) adoptive or foster care placement of a son or a daughter or for care of the child after placement; or (3) to care for a parent (not a parent-in-law) with a serious health condition.

2. In situations where both the husband and wife use a portion of FMLA leave for one of the reasons listed in the previous paragraph, each spouse is entitled to the difference between the amount he/she has taken individually and twelve weeks of FMLA leave for reasons other than those listed. For example, if both spouses use six weeks of leave for the birth of a child, each could take an additional six weeks of leave for personal illness, or to care for a family member with a serious health condition. In situations where FMLA leave is not taken due to birth, adoption, foster care, or to care for a parent during a given year, each spouse is entitled to a full twelve workweeks of leave.

3. If one spouse is ineligible for FMLA leave, the spouse who meets the eligibility requirement is entitled to 12 workweeks of FMLA leave.

4. Service Member Family Leave – the aggregate number of work weeks of leave to which both that husband and wife may be entitled is limited to 26 work weeks during a 12-month period.

D. Use of an intermittent or reduced leave schedule

"Intermittent Leave" is leave taken in separate blocks of time due to a single qualifying reason and may include leave periods from an hour to several weeks. A "reduced leave schedule" reduces an employee's usual number of working hours per work-day or work-week.

An employee may take intermittent FMLA leave or have a reduced leave schedule over a twelve month time period when medically necessary for (1) planned and/or unanticipated medical treatment of a serious health condition by or under the supervision of an HCP, (2) recovery from the condition, or (3) recovery from treatment of the condition. An employee

Formatted: Right: 18 pt

may also take intermittent leave or request a reduced schedule to provide care to an immediate family member with a serious health condition. Employees may not use intermittent FMLA leave following the birth of a child or adoptive or foster care placement for any reason other than medical necessity.

Intermittent leave or a reduced schedule may also be used for absences where the employee or family member is incapacitated or unable to perform the position's essential functions due to a chronic serious health condition even if treatment is not rendered by a health care provider.

If an employee requests intermittent leave or leave resulting in a reduced work schedule, the Designator may require that the employee transfer temporarily to another position for which the employee is qualified and which better accommodates the employee's need for recurring leave periods. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave. This temporary position must have equivalent pay and benefits, but need not have equivalent duties. For information regarding benefits (e.g., insurance and longevity) not ordinarily provided to part-time employees that may not be eliminated, see Section XIII.

An employee may not be transferred to an alternative position in an effort to discourage use of FMLA leave or otherwise work a hardship on the employee (e.g., a day-shift employee may not be reassigned to a later shift).

When an employee who transferred to an alternative position is able to return to full-time work, he/she shall be placed in the same or equivalent position as the job he/she had when the leave commenced. He/she cannot be required to take more FMLA leave than the circumstance for the leave requires.

VI. Time limitations regarding the designation of leave as FMLA leave

In all circumstances, the Designator is responsible for designating leave, paid or unpaid, as FMLA-qualifying and to notify the employee of the designation. For intermittent leave or a reduced schedule, only one notice is required unless changes occur regarding the circumstances pertaining to the leave.

Unless there are extenuating circumstances, the Designator must notify the employee within two (2) business days of being notified of a need for FMLA leave.

The designation must be based only on information provided by the employee or the employee's spokesperson (e.g., if the employee is incapacitated, the employee's spouse, adult child, parent, doctor, etc.).

Designation of FMLA leave must be made before the leave starts unless there is insufficient information to make a determination. If the Designator has the requisite knowledge to designate FMLA leave at the time the employee gives notice or commences leave, fails to make the designation, and does not notify the employee, he/she may not designate FMLA

Formatted: Right: 18 pt

leave retroactively. FMLA leave may be designated only prospectively as of the date the employee is notified. None of the absence prior to the notification may be counted against the employee's 12 work week entitlement.

Leave may not be designated as FMLA leave after the employee has returned to work with two (2) exceptions:

(1) If it was not known by the Designator that the employee was absent for an FMLA reason until he/she returned to work (e.g., brief absence of employee), the Designator may notify the employee within two (2) business days that the designation has been made retroactively. If leave was taken for an FMLA reason and has not been designated accordingly, the employee must notify the Designator within two (2) days of returning to work. Without such timely notification, the employee may not assert FMLA protection for the absence.

(2) If the Designator knows the reason for the leave but does not have confirmation or has not received requested certification, or is in the process of obtaining an additional medical opinion, he/she should make a preliminary designation and notify the employee at the time the leave begins or as soon as the reason is known. Upon receipt of the requisite information confirming the absence was for an FMLA reason, the preliminary designation becomes final. The designation is withdrawn if the medical certification(s) fail to confirm the absence was for an FMLA reason.

VII. Designation of paid and unpaid leave toward the employee's twelve week leave entitlement

The Designator of the institution/technology center/Central Office is responsible for designating paid and unpaid leave as FMLA qualifying leave. The designation is contingent upon whether or not the employee has accumulated leave balances. An employee with no accumulated sick or annual leave balances must take his/her leave as unpaid. An employee who has an accumulated sick and annual leave balance must use this accumulated leave during a period of FMLA leave before going on leave without pay unless otherwise stipulated in other TBR leave policies. Therefore, TBR leave policies and the FMLA leave policy shall run concurrently and not consecutively. For information regarding reinstatement rights if additional leave is used beyond the 12 workweek FMLA entitlement, see Section XIV.

If a worker's compensation injury/illness meets the criteria for a serious health condition, the worker's compensation absence and the FMLA leave entitlement shall also run concurrently.

Compensatory time is not a form of accrued leave. However, an employee may request to use compensatory time for an FMLA qualifying event. If it is used in accordance with regulations, 29 CFR 553.25, the absence which is paid with compensatory time may not be counted against the FMLA leave entitlement.

In any circumstance where the Designator does not have sufficient information about the reason for an employee's use of paid leave, he/she should make further inquiry of the

Formatted: Right: 18 pt

employee or spokesperson to ascertain whether or not it is potentially FMLA-qualifying. See the Request for Family and Medical Leave Form - Attachment A.

If there is a dispute as to whether or not paid leave qualifies as FMLA leave, it should be resolved through discussions between the employee and the designator. Such discussions and the decision must be documented.

Notification that paid leave has been designated as FMLA leave may be oral or written; however, oral notifications must be followed up in writing no later than the following payday. Exception: If the payday is less than one week after the oral notice, the written notification must be made by the subsequent payday. The written notice may be in any form, including a notation on the employee's pay stub.

If an employee requesting to use paid leave for an FMLA-qualifying purpose does not explain the reason for the leave-consistent with the institution's/technology center's/Central Office's practice - and the request is denied, the employee must provide sufficient information establishing an FMLA-qualifying reason for the request to be approved. Employees using paid leave who seek an extension of unpaid leave for an FMLA-qualifying reason will need to state the reason. If this is due to an event which occurred during the period of paid leave, the leave used after the FMLA-qualifying event will be counted against the 12 workweek entitlement and will be paid/unpaid in accordance with the provisions of the appropriate leave policy.

An employee requesting unpaid FMLA leave must explain the reasons why the leave is needed in order that the Designator be able to determine leave eligibility under the provisions of the Act. If qualifying, this time can then be counted against the employees' twelve week leave entitlement in accordance with the provisions stated above.

VIII. How the FMLA work week is calculated

A. Employees who do not take intermittent leave or work a reduced schedule

1. Full-time employees who normally work 7.5 hours per day 5 days per week are entitled to the same FMLA leave for 12 work weeks. (Some full-time employees, such as public safety officers, may work more than 7.5 hours per day; their entitlement will be determined accordingly.)

2. Part-time employees receive FMLA leave on a pro rata or proportional basis. If an employee works 6 hours a day, 5 days per week, the employee is entitled to an equal amount of FMLA leave for 12 work weeks.

B. Employees who take intermittent leave or work a reduced schedule

Only the amount of leave actually taken may be counted toward the 12 work weeks entitlement.

Formatted: Right: 18 pt

1. If a full-time employee normally works a 7.5 hour day and works 3.75 hour days under a reduced schedule, the employee would use 1/2 weeks of FMLA leave each week.

2. If an employee normally works a part-time schedule, the amount of leave is determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule. For example, if an employee normally works 30 hours per week and works only 20 hours per week under a reduced schedule, the employee's 10 hours of leave would be one-third of a week of FMLA leave for each week the employee worked the reduced schedule.

3. If an employer has made a permanent or long term change in the employee's schedule (for reasons other than FMLA), the hours worked under the new schedule would be used for calculating the employee's normal work week.

4. If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks prior to the beginning of the leave period would be used for calculating the employee's normal work week.

An employee may not use paid leave intermittently with unpaid leave during a continuous leave period to continue benefits (e.g., insurance premiums). For example, during a continuous leave period, an employee may not designate two weeks of paid leave, then two weeks of unpaid leave.

If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave does not count against the 12 weeks FMLA leave period. For example, sick leave used for a medical condition which is not a serious health condition (e.g., routine physical examination) does not count against the 12 weeks of FMLA leave entitlement.

IX. Examples of how TBR leave is used for various FMLA qualifying events

A. If an employee has sufficient sick leave balance, he/she may use sick leave for up to 30 working days under Adoptive Leave Policy 5:01:01:02. The employee has the option, however, of retaining his/her sick and annual leave balances and using leave without pay.

B. A female employee requests four months of leave under Tennessee Board of Regents Maternity Leave Policy 5:01:01:08. Since birth or care of a newborn child is also a FMLA qualifying event, the first twelve work weeks of the maternity leave shall be designated as FMLA leave. In accordance with the Maternity Leave Policy, sick leave may be used only for the period of the medical disability. The remaining balance of the FMLA leave may be taken as annual or unpaid leave.

After the twelve work week FMLA entitlement is completed, this employee is still eligible to take the difference remaining between four months of maternity leave and 12 work weeks of FMLA leave. However, the institution/technology center/Central Office is under no obligation to provide health insurance benefits during this non-FMLA period, should the leave be without pay.

Formatted: Right: 18 pt

X. Employee Notification Requirements

An employee giving notice of the need for FMLA does not need to express his rights under FMLA or even mention FMLA to fulfill his obligation to provide notice. However, he/she must provide sufficient information for the Designator to determine that leave is for an FMLA qualifying event.

When the need for FMLA leave is foreseeable, an employee must provide at least thirty days advance notice prior to the date the leave is to begin. In situations where thirty day notification is not possible, because the employee has no knowledge of the exact time when the leave will need to begin or because of a medical emergency, notice must be given as soon as practicable, normally within one or two business days of when the employee knows the date will be needed.

The employee should notify the supervisor of the need for leave and the anticipated timing and duration of the leave. The supervisor may request additional information to determine if the employee is requesting FMLA leave specifically and to obtain the necessary details of the leave being taken.

When accumulated sick and annual balances are to be applied toward the twelve work week entitlement, the notification requirements in the institution's/technology center's/Central Office's leave policies apply.

A request for Leave because of a qualifying exigency must be supported by a certification issued at such time and in such manner as regulations prescribe. The employee shall provide, in a timely manner, a copy of such certification to the employer.

XI. Employee Medical Certification Requirements

A. Requesting medical certification

The Designator may require that an employee's request for unpaid FMLA leave be supported by certification from a health care provider. Any request for medical certification should be made at the time the employee requests leave or as close as possible to that date. If the leave was unforeseen, the certification should be requested as soon as possible after the leave has begun. If the Designator has reason to question the appropriateness of the leave or its duration, certification may be requested at a later date.

The requirement may be made verbally or in writing and must allow a minimum of fifteen calendar days for the employee to provide the certification. The employee must provide the certification within the requested time frame, unless it is not practicable to do so under the circumstances (such as an employee's personal serious health condition preventing his/her ability to obtain the necessary information in a timely manner.)

An employee on paid FMLA leave is required to provide medical certification only in accordance with the provisions of the appropriate TBR leave policies.

Formatted: Right: 18 pt

The Designator's written notification to the employee that the leave may qualify as FMLA leave must include information regarding the medical certification requirement, as well as, the consequences for not providing medical certification. Subsequent medical certification may be requested orally.

B. Allowable medical certification information

The Designator may request only the following information from a health care provider certifying an employee's personal serious health condition or that of a son, daughter, or parent:

1. Certification as to which part of the definition of "serious health condition", if any, applies to the patient's condition and how the medical facts support the criteria of the definition.

2. A brief statement of the treatment regimen prescribed for the condition, including estimated number of visits, nature, frequency, and duration of treatment (including referral to or treatment by another HCP).

3. The date the serious health condition began and the health care provider's medical judgement of the probable duration of the condition.

4. Indication of whether or not intermittent leave or a reduced schedule will be required and the probable duration of the period.

For medical leave requested due to an employee's personal health condition, the certification, if required, must also include either a statement that the employee is unable to perform work of any kind, that the employee is unable to perform essential job functions of the employee's position (based on a statement of essential functions of the employee's position which has been provided by the institution/technology center/Central Office), or that the employee must be absent from work for treatment. (See Attachment B.)

For family leave to care for a spouse, son, daughter, or parent with a serious health condition, the medical certification, if required, must also include a statement that the patient needs assistance for basic medical, hygiene, nutritional needs, safety, or transportation, or that the employee's presence would provide psychological comfort to assist in the patient's recovery. In these situations, the employee is required to indicate on the certification form the care that will be provided and an estimate of the duration.

C. Requesting second and third opinions

Once an employee has submitted a complete medical certification document signed by the employee's or family member's HCP, the Designator may not request any additional information from that HCP unless the employee is on FMLA leave running concurrently with a worker's compensation absence. However, if the Designator has reason to question the validity of the medical certification, the employee may be required to obtain a second opinion from another HCP, at the institution's/technology center's/Central Office's expense. This HCP

Formatted: Right: 18 pt

cannot be employed by the institution/technology center/Central Office on a regular basis. Neither can this individual be under any contract or agreement with the institution/technology center/Central Office to provide second opinion services unless the employer is located in an area where access to health care is extremely limited.

If the opinions of the employee's and the Designator's HCP differ, Designator may obtain another certification from a third HCP at the institution's/technology center's/Central Office's expense. This HCP must be one agreed upon by both parties and the third provider's opinion is considered final and binding. The third HCP must be designated or approved jointly by the employer and the employee. The employer and employee must act in good faith attempting to reach an agreement on the provider to be selected. If the employee fails to exercise good faith, the second HCP's opinion will prevail; if the Designator fails to exercise good faith, the opinion of the employee's HCP will prevail.

An employee or family member may be reimbursed for any reasonable "out of pocket" travel expenses incurred to obtain a second and/or third medical opinion. Travel outside normal commuting distances may not be required except in very unusual circumstances.

If a second and/or third opinion must be sought for an employer or family member traveling in another country, medical certification shall be accepted by an HCP who practices in that country.

D. Requesting subsequent recertification of medical conditions

The Designator may request recertification of a medical condition only in connection with an employee's absence. The intervals between these requests can be no less than thirty (30) days, except in situations where (1) the employee requests an extension of leave; (2) circumstances described in the original certification have changed significantly; or (3) the Designator has obtained information conflicting with the continuing validity of the certification. The employee must provide certification within 15 calendar days following the employer's request unless circumstances make it impractical to do so. Unless indicated otherwise by the Designator, recertification will be at the employee's expense.

E. Consequences of an employee's failure to provide required medical certification

In situations of foreseeable leave and a 30 days notice has been provided, if an employee fails to provide certification within the requested allowable time frame, he/she may experience a delay in the continuation of FMLA leave until certification is provided.

When the need for leave is unforeseeable, or in the case of recertification, an employee must provide certification within a reasonable period of time set by the Designator, which must allow at least 15 calendar days, based on the particular medical circumstances. For example, in an emergency situation, it may not be practical for an employee to provide the certification in the required period. In such instances, the employee may experience a delay in the continuation of FMLA leave. If medical certification is never provided, the leave is not FMLA leave.

Formatted: Right: 18 pt

F. Requiring medical certification for reinstatement

In situations where an employee is on FMLA leave due to a serious health condition preventing the performance of his/her job duties, the Designator may require, as a condition of the employee's restoration to a position, medical certification from an HCP that the employee is able to resume work. In order for this requirement to be permissible under FMLA guidelines, the Designator must have uniform policies or practices in place that are consistently applied for all employees taking leave under certain specific conditions. When the institution/technology center/Central Office does have such policies, an employee requesting FMLA leave must be notified of the requirement for medical certification prior to job restoration, either before or immediately after the leave period begins.

When notification has been properly given and policies have been applied uniformly, the Designator may deny position restoration to an employee until medical certification is submitted.

XII. Prohibition against interfering with employee rights

Provisions of FMLA prohibit interference with an employee's rights to family and medical leave under the law. An employee cannot waive, nor may the institution/technology center/Central Office induce the employee to waive his/her rights under FMLA. The essential job functions may not be changed in order to preclude the taking of leave. In addition, the number of working hours may not be reduced in order to adversely impact an employee's eligibility. The Designator should review existing Tennessee Board of Regents policies and practices to ensure compliance.

XIII. Impact of FMLA Leave on Health Insurance and Other Benefits

A. Insurance Coverage

For the duration of FMLA leave, the institution/technology center/Central Office is required to maintain an employee's health coverage under the State Group Insurance Plan under the same conditions coverage would have been provided if the employee had continued working. It is very important that the Designator communicate approval of FMLA leave to the insurance preparer.

The same health benefits provided to an employee prior to taking FMLA leave must be maintained during the FMLA leave. For example, if family coverage is provided to an employee, family coverage must be maintained during the FMLA leave. Moreover, an employee temporarily working a reduced schedule (for purposes of this section, less than 30 hours per week) during a period of FMLA leave is entitled to maintain the same insurance coverages that were in effect prior to the FMLA leave period.

If an employer provides a new health plan or benefits or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. For example, if an

Formatted: Right: 18 pt

employer changes a group health plan so that dental care becomes covered under the plan, an employee on FMLA leave must be given the same opportunity as other employees to receive (or obtain) the dental care coverage.

Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave. If the plan permits an employee to change from single to family coverage upon the birth of a child or otherwise add new family members, such a change in benefits must be made available while an employee is on FMLA leave. If the employee requests the changed coverage it must be provided by the employer.

The Designator is responsible for advising the employee of his/her options to continue or discontinue insurance coverage(s) prior to the beginning of the leave period. If the employee elects to continue insurance coverage(s), the Designator must provide the employee with written notice of the terms and conditions under which premiums must be paid. (See Attachment A.)

If coverage is not to be continued, the employee must contact the insurance preparer prior to the beginning of the leave. When an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverage, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc. The employee must, however, request to reinstate coverage within thirty (30) days of his/her return to work to retain eligibility without being required to prove insurability or having the pre-existing conditions period imposed.

To ensure that an employee on unpaid FMLA leave is reinstated with the same benefits in effect prior to the leave period, the institution/technology center/Central Office shall pay the employer as well as any employee portion of premiums which has not been remitted in accordance with the provisions on Attachment A. Premiums paid on behalf of the employee will be deducted from the employee's paycheck following his/her return to work.

An employee is deemed to have returned to work if he/she has returned for 30 calendar days. An employee who retires immediately following FMLA leave or during the first 30 days after returning to work is also deemed to have returned to work.

If the employee fails to return to work or does not stay 30 calendar days, the employer portion of the insurance premium paid during FMLA leave may be recovered except for the following reasons:

1. The continuation, recurrence or onset of a serious health condition which would entitle the employee to leave under FMLA or

2. Other circumstances beyond the employee's control, such as an unexpected transfer of the employee's spouse to a job location more than 75 miles from the employee's worksite or the lay-off of the employee while on leave.

Formatted: Right: 18 pt

If the employee fails to return to work due to a serious health condition, the Designator may require medical certification of the employee's or the family member's serious health condition.

The employer portion of the health premium may not be recovered during workers' compensation leave designated as FMLA leave.

B. Longevity

An employee on FMLA leave, paid or unpaid, shall receive longevity in accordance with the provisions of Longevity Guideline P-120. Note: The institution/technology center/Central Office may not eliminate benefits which otherwise would not be provided to part-time employees. Therefore, an employee who has been temporarily transferred to a part-time position during a period of FMLA leave, retains eligibility for longevity pay, regardless of the percentage of employment.

C. Leave Accrual

Employees shall accrue leave in accordance with the annual and sick leave policies. Due to the fact that leave is based on the number of hours worked per week, the accrual rate may be proportionately reduced.

XIV. Job Restoration Requirements

Upon returning from FMLA leave, an employee must be restored to his/her original position or to an equivalent position with equivalent benefits, pay, and other employment terms and conditions. This involves restoration to a position having the same or substantially similar duties and responsibilities and having substantially equivalent skill, effort, responsibility and authority. This applies only to employees returning from FMLA leave and may not apply to employees who used additional leave beyond the 12 workweek FMLA entitlement, as provided in other TBR leave policies.

An employee returning from FMLA leave is entitled to any general increases that all other institution/technology center/Central Office employees have received during the period the employee was on leave. He/she is also entitled to shift or work schedule assignments equivalent to those in effect prior to the beginning of the leave period and to a work location assignment geographically close to the one where previously employed.

If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, etc., as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work. If an employee can no longer perform the essential functions of the position because of a physical or mental condition, including the continuation of a serious health condition, the provisions of the Americans With Disabilities Act (ADA) regarding the need for other accommodations may apply. Such cases should be referred to the institution/technology center/Central Office ADA coordinator. (See Section XV.)

Formatted: Right: 18 pt

If an employee should require more or less FMLA leave than was originally anticipated, he/she is required to provide the institution/technology center/Central Office two business days notice where feasible. Regarding an employee who wants to return to work earlier than anticipated, he/she shall be restored once such notice is given, or where such notice is not feasible.

In situations where an employee notifies the Designator that he/she is not returning to work, the obligation to restore the employee to a position ends. Should the employee indicate he/she is unable to return to work but continues to want to return, restoration requirements remain in effect.

Note: An employee has no greater right to job restoration with equivalent benefits and conditions of employment than he/she would have had if continuously employed. Thus, if a work location is closed, a shift eliminated, overall work hours for an entire unit reduced, or positions abolished through a reduction in force, the employee is only entitled to conditions that would have been in effect for the employee if the leave had never been taken.

For example, if an employee's shift is eliminated during the time period that leave was taken, the employee is not entitled to assignment to the previous shift's work hours or to shift differential pay when he/she returns from leave that other employees formerly on the shift no longer receive. However, the employee is entitled to employment in a position meeting all other previous employment conditions. (Also refer to Section I,C.)

XV. How FMLA Affects the Americans with Disabilities Act

The Family and Medical Leave act is "not intended to modify or affect the Rehabilitation Act of 1973, as amended, the regulations concerning employment which have been promulgated pursuant to that statute, or the Americans with Disabilities Act of 1990, or the regulations under the Act." The leave provisions of the FMLA are totally distinct from the reasonable accommodation obligations required of employers covered under the ADA. (See Attachment C.) Therefore, employees must be provided leave under whichever statutory provision provides the greater rights.

In the event that both FMLA and discrimination laws are violated, an employee may be able to recover under either or both statutes. However, double relief may not be awarded for the same loss. In such instances, the employee determines the avenue of relief.

In various situations, the FMLA and ADA will interact with respect to a qualified employee with a disability. The following scenario illustrates how the laws may interact.

A qualified individual with a disability who is also an "eligible employee" entitled to FMLA leave request 10 weeks of medical leave as a reasonable accommodation, which the employer grants because it is not an undue hardship. The employer advises the employee that the 10 weeks of leave is also being designated as FMLA leave and will count towards the employee's FMLA leave entitlement. This designation does not prevent the parties from also treating the leave as a reasonable accommodation and reinstating the employee into the same

Formatted: Right: 18 pt

job, as required by the ADA, rather than an equivalent position under FMLA, if that is the greater right available to the employee. At the same time, the employee would be entitled under FMLA to have the employer maintain group health plan coverage during the leave, as that requirement provides the greater right to the employee.

If the same employee needed to work part-time (a reduced leave schedule) after returning to his or her same job, this employee would be entitled under the ADA to reasonable accommodations to enable the employee to perform the essential functions of the part-time position. In addition, because the employee is working a part-time schedule as a reasonable accommodation, the employee would be shielded from FMLA's provision for temporary assignment to a different alternative position. Once the employee has exhausted his or her remaining FMLA leave entitlement while working the reduced (part-time) schedule, if the employee is a qualified individual with a disability, and if the employee is unable to return to the same full-time position at that time, the employee might continue to work part-time as a reasonable accommodation, barring undue hardship; the employee would then entitled to only those employment benefits ordinarily provided by the employer to part-time employees.

XVI. Requirements for providing information on FMLA rights and responsibilities

The Designator must post notices explaining FMLA provisions and providing information concerning procedures for filing complaints on violations of the Act with the Wage and Hour Division of the U.S. Department of Labor. These notices must be posted in conspicuous places where employees and applicants can easily access the information provided.

If the institution/technology center/Central Office has an employee handbook or other document explaining employee benefits or leave rights, information regarding FMLA entitlement and employee obligations under the Act must be included. Efforts must be made to responsively answer employees' questions regarding their rights and responsibilities under the FMLA.

Whenever an employee requests family or medical leave the Designator must provide information to the employee regarding his/her specific obligations and explaining the consequences of failure to meet these obligations. The following information should be included: (1) that the leave will be counted against the employee's FMLA leave entitlement; (2) any requirements for furnishing medical certification of a serious health condition and information regarding the consequences of not providing this information; (3) the employer's right to substitute paid leave in specific situations and conditions related to the substitution; (4) the requirement for the employee to make health insurance premium payments and procedures for making these payments; (5) any requirement to present medical certification as a condition of job restoration following the conclusion of the leave period; (6) the employee's right to job restoration upon return from leave; and (7) the employee's potential liability for the employer's portion of the health insurance premium payments should the employee fail to return to work after taking FMLA leave.

If the leave period has already begun, the Designator should send notification to the employee's address of record that FMLA leave has been designated. A written notice must be

Formatted: Right: 18 pt

provided to the employee the first time FMLA is used during any six-month period. FMLA notices to sensory impaired employees must also comply with all applicable Federal and State law requirements. The institution/technology center/Central Office may not penalize an employee for failure to comply with any FMLA provision if notice has not been given in accordance with the requirements of the Act.

XVII. Record-keeping requirements

The Designator in each agency is responsible for maintaining required records for all employees using FMLA leave. Employers must keep records specified by these regulations for no less than three (3) years and make them available for copying, inspection and transcription by the Department of Labor upon request. In addition to basic payroll and employee data and policy documentation, the following records are required:

A. Dates FMLA leave is taken by each employee and clear designation of this time as FMLA leave.

B. Hours of leave taken, if the amount is less than one full day.

C. Copies of employee notices of FMLA leave sent to the Designator, if in writing, and copies of general and specific notices given to employees as required under FMLA guidelines.

D. Records of any dispute between the employee and the Designator regarding the designation of leave as FMLA leave.

E. Any work schedule agreed upon by the Designator and employee, in situations where intermittent leave or leave on a reduced work schedule has been approved.

F. Any records related to FMLA, including medical certification, recertification, and medical history documentation must be kept separately from other personnel information due to confidentiality.

Source: TBR Meeting, June 25, 1995 (Finance and Administration approval January 17, 1996); TBR Meeting, March 29, 1996 (Finance and Administration approval November 13, 1996)

Formatted: Right: 18 pt

Attachment A

TENNESSEE BOARD OF REGENTS

Request for Family and Medical Leave

PART I - Employee Information

Name: _____Employee SSN: _____

Employment Date: _____Leave Period: _____

Office Phone: _____Home Phone: _____

Name of Spouse if Employed by State:
_____

Spouse SSN: _____Agency Code #: _____

Purpose of Leave Request:

Serious Illness of:

_____ Employee _____ Parent _____ Spouse

_____ Child Age: _____ Incapacitated: ____ Yes ____ No

Birth, Adoption, or Foster Care Placement:

Name of Child: _____

Date of Birth: _____

*Date of Adoption/Placement: _____

* Please provide a copy of adoption placement papers and/or certificate.

Qualifying Exigency**

_____Spouse_____Parent _____Child

**Please provide supporting documentation

Service Member Family Leave***

_____Spouse_____Parent_____Child_____Next of Kin

Formatted: Right: 18 pt

***Please provide supporting documentation

Designation of Leave Usage: Begin Date End Date

Sick Leave _____ _____

Annual Leave _____ _____

Leave Without Pay _____ _____

****Special Leave Requests:

Intermittent Leave _____ Yes _____ No

Reduced Work Schedule _____ Yes _____ No

****Certification of Health Care Provider form must be completed for approval.

I understand the following:

(1) I may be required to furnish a completed Certification of Health Care Provider form in order for Family and Medical Leave to be approved.

(2) The institution/technology center/Central Office will pay the employer portions of the group medical insurance during any approved unpaid FMLA leave, provided I pay the employee portion in accordance with the payroll deadline date. All other insurance plans that I wish to continue during the FMLA period must be fully paid by me.

(3) If I elect not to continue insurance coverage during the FMLA leave period, I must notify the insurance preparer in writing prior to the beginning of the leave. If plans are voluntarily canceled prior to the leave, I must request that coverages be reinstated within 31 days of my return to work. Premiums that would have been due during the FMLA leave for optional plans will be deducted from my paycheck.

(4) If I do not return to work, I will be responsible for reimbursing the institution/technology center/Central Office for employer premiums paid in my behalf during an unpaid FMLA leave period. I will not have to repay premiums; if I do not return to work for the following reasons: (a) continuation, recurrence, or onset of a serious health condition of myself or an immediate family member or (b) other circumstances beyond my control (not voluntary).

(5) If my period of leave continues beyond the twelve (12) work weeks provided in the Family and Medical Leave Act of 1993, I must notify the insurance preparer in writing if I wish to drop coverage for the remainder of the leave period. This notification must be

Formatted: Right: 18 pt

received no later than the last day of the month in which my insurance is continued under the provisions of FMLA leave.

(6) I will not accrue leave while on leave without pay.

Employee Signature: _____ Date: _____

PART II - Employer Review and Recommendations

Supervisor/Department Head: _____ Date: _____

Recommend Approval: Yes _____ No _____

Human Resources Officer : _____ Date: _____

Approved: _____ Not Approved: _____

Formatted: Right: 18 pt

Attachment B

TENNESSEE BOARD OF REGENTS

Certification of Health Care Provider (Family and Medical Leave Act of 1993)

The information sought on this form relates only to the condition for which the employee is taking Family and Medical Leave Act (FMLA) leave. "Incapacity" for purposes of FMLA is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore or recovery therefrom.

1. Employee's Name: _____

2. Patient's Name: _____

3. The attached FMLA Appendix describes what is meant by a "serious health condition" under the Family and Medical Leave Act. Does this patient's condition qualify under any of the categories described? If so, please check the applicable category.

(1)_____(2)_____(3)_____(4)_____(5)_____(6)_____, or none of the above_____

4. Describe the medical facts which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

5. a. State the approximate date the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present incapacity if different):

b. Will it be necessary for the employee to take work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in Item 6 below)?

If yes, give the probable duration:

c. If the condition is a chronic condition (condition #4) or pregnancy, state whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity:

6. a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments: _____

If the patient will be absent from work or other daily activities because of treatment on an intermittent or part-time basis, also provide an estimate of the probable number and interval between such

treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

b. If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please state the nature of the treatments:

c. If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

Formatted: Right: 18 pt

7. a. If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind? _____

b. If able to perform some work, is the employee unable to perform any one or more of the essential functions of the employee's job (the employee or the employer should supply you with information about the essential job functions)? _____ If yes, please list the essential functions the employee is unable to perform:

c. If neither a. or b. applies, is it necessary for the employee to be absent from work for treatment: _____

8. a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation? _____

b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery? _____

c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:

_____ _____
(Signature of Health Care Provider) (Type of Practice)

_____ _____
(Address) (Telephone Number)

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

_____ _____
(Employee Signature) (Date)

Formatted: Right: 18 pt

FMLA APPENDIX

A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care - Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment - A period of incapacity of more than three (3) consecutive calendar days (including any subsequent treatment of period of incapacity relating to the same condition), that also involves:

(a) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a healthcare provider; or (b) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

3. Pregnancy - Any period of incapacity due to pregnancy or for prenatal care.

4. Chronic Conditions Requiring Treatments - A chronic condition which:

(a) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider; (b) Continues over an extended period of time (including recurring episodes of a single underlying condition); and (c) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)

5. Permanent/Long-term Conditions Requiring Supervision - A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving treatment by, a health care provider. (Examples include: Alzheimer's, a severe stroke, or the terminal stages of a disease)

6. Multiple Treatments (Non-Chronic Conditions) - Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), kidney disease (dialysis).

Formatted: Right: 18 pt

COMPARISON OF FMLA AND ADA PROVISIONS

Differences in concept:

FMLA Provision: A "serious health condition" is not the same concept as a “disability”.

ADA Provision: A "disability" must be analyzed separately from a "serious health condition".

Leave entitlement:

FMLA Provision: An eligible employee may use up to 12 work weeks of leave in any 12-month period.

ADA Provision: A qualified employee may use an indeterminate amount of leave as an accommodation, barring undue hardship. (A qualified employee is an individual, who, with or without a reasonable accommodation, can perform the essential functions of the position the employee holds or desires.)

Maintenance of benefits:

FMLA Provision: A covered employer must maintain health insurance coverage as if the employee had been working continuously.

ADA Provision: Employers are only required to maintain benefits assigned to the position. Exception: Medical insurance must be maintained for a regular employee who has an approved worker's compensation claim.

Alternative work schedules and/or positions:

FMLA Provision: An employee may work a reduced or intermittent schedule for the equivalent of 12 work weeks. An employer may temporarily transfer an employee to an alternative position.

ADA Provision: An employer may offer a qualified an employee a part-time position. An employee may be reassigned to an equivalent vacant position only when unable to perform the essential functions of the current position and no accommodation in the current position is possible or the accommodation would cause undue hardship.

Formatted: Right: 18 pt

Accommodations:

FMLA Provision: Employees may not be required to take a job with reasonable accommodations in lieu of FMLA leave

ADA Provision: Employees are entitled to reasonable accommodations in order to perform the essential functions of a position. Employers may be required to offer an employee the opportunity to take a job with reasonable accommodations.

Job Restoration

FMLA Provisions: An employee must be reinstated to the same or an equivalent position, with equivalent pay and benefits.

ADA Provisions: If an employee who has exhausted the FMLA leave entitlement is unable to perform the essential duties of the same or an equivalent position, even with reasonable accommodations the employer may be required to make a reasonable accommodation at that time by allowing the employee to work part-time or by reassigning the employee to a vacant position, barring undue hardship.

Work-related injury/illness

FMLA Provisions: FMLA leave and worker's compensation benefits run concurrently. An employee who is advised by an HCP that he/she can return to a light duty position, is not required to take the position. Although the employee may lose worker's compensation payments, he/she may continue on FMLA leave until he/she is able to return to work or the FMLA period is exhausted.

ADA Provisions: Same as above. An employee who has exhausted his FMLA leave entitlement and is still unable to return to work has rights under the ADA.

Fitness for duty certification

FMLA Provisions: An employer's request for certification must comply with the ADA requirement.

ADA Provisions: A fitness-for-duty physical must be job-related and consistent with business necessity.

Formatted: Right: 18 pt

PRESIDENTS/DIRECTORS QUARTERLY

DATE: May 13, 2008 – Presidents Meeting
May 14, 2008 – Directors Meeting

AGENDA ITEM: **Background Investigations for Presidents and Directors**

ACTION: Requires Vote

PRESENTER: Vice Chancellor Bob Adams

BACKGROUND INFORMATION:

Attached are the revisions to TBR Policies 1:03:03:00 Selection and Retention of Presidents and 1:03:03:50 Selection and Retention of Technology Center Directors for your review and consideration for approval. The proposed revision recommends background investigations on all interview candidates recommended for the positions of President and Director. All candidates interviewed must consent to the background investigation.

POLICY 1:03:03:00

SUBJECT: Selection and Retention of Presidents

The Tennessee Board of Regents is responsible for the selection and employment of the chief executive officers of the member institutions of the State University and Community College System of Tennessee, based upon the recommendation of the chief executive officer of the System. In an effort to recruit and retain the most qualified university and college administrators as presidents of the institutions under the jurisdiction of the Board, the following policy of the Board is established:

Selection of Presidents

1. The Board shall establish qualification criteria for the selection of a president at each of the various institutions upon the vacancy or notice of vacancy of the office. The criteria may vary from institution to institution based upon the Board's appraisal of the unique characteristics and complexity of the president's responsibility at each institution.

2. The Board shall establish a selection process for each presidency based upon the Board's appraisal of the most appropriate method to be used for the selection of a president at each institution.

3. The Board delegates to the Chancellor the authority to appoint interim presidents in cases of illness, death, untimely resignation, etc., of incumbents. The Chancellor shall consult with the Chairman and Vice Chairman of the Board prior to making an interim appointment.

4. It is the policy of the Board of Regents to conduct background investigations on all candidates recommended for interview for the position of president. The investigations are conducted based on guidelines developed by the system office.

Appointment and Retention of Presidents

A president serves at the pleasure of the Board. However, the Board anticipates upon appointment that a president will serve an institution for a number of years. An annual salary agreement shall be issued by the Board through the Chancellor at the beginning of each fiscal year.

A president may resign at any time upon written notification to the Board through the Chancellor. A president may be terminated at any time by the Board. In the event of termination of a president, three months' severance compensation may be authorized by the Board.

Evaluation of Presidents

Each president shall be evaluated based upon an evaluation process developed and conducted by the Chancellor. Generally, the evaluation shall be conducted annually and as a minimum, the Chancellor shall consider:

1. The president's accomplishment of annual objectives at the institution.

2. The demonstrated ability of the president to serve as the leader of a campus community, including such factors as the ability to organize, to make decisions, to motivate others, to communicate, to maintain strong external relationships, and to develop other leaders.

3. The commitment of the president to the institution and the System, and to the implementation of the Board policies.

The evaluations made by the Chancellor should be utilized to improve the administration of a president, to determine compensation adjustment, and to determine future employment status.

Regents Professorships

The Board may confer a Regents Professorship upon a past president. A president must have served a minimum of ten years as the chief administrative officer of a higher education institution in Tennessee to be eligible for such consideration. A Regents Professor may be assigned to either the Board staff in a research capacity or to an individual institution in a research and/or teaching capacity. A Regents Professor assignment shall be determined by the Chancellor if the position is to be with the Board staff or by the president of an institution, in consultation with the Chancellor, if the position is to be with one of the institutions. The salary of a Regents Professor will be determined by the Chancellor but shall not be less than seventy percent of the direct salary received during the last year of service as president prior to appointment as a Regents Professor. A Regents Professorship appointment at an institution shall be with tenure on an academic year basis.

A Regents Professor shall have duties and responsibilities commensurate with the position. Further, a Regents Professor shall have the necessary accommodations and support assistance to render valuable service to the Board or to an individual institution.

A Regents Professor accepting a teaching and/or research assignment may be granted sufficient time to prepare for the new appointment, not to exceed six months with all benefits provided herein.

Source: TBR Meeting, September 30, 1977

POLICY NO. 1:03:03:50

SUBJECT: Selection and Retention of Technology Center Directors

In order to recruit and retain the most qualified individuals as directors of the Tennessee Technology Centers under the jurisdiction of the Tennessee Board of Regents, the following policy is established:

Selection of Directors

1. The Chancellor is authorized to select the directors of the centers, subject to confirmation by the Board.

2. The Chancellor shall establish qualification criteria for the selection of a director at each of the various centers upon the vacancy or notice of vacancy of the office. The criteria may vary from center to center based upon the Chancellor's appraisal of the unique characteristics and complexity at each center.

3. The Chancellor shall establish a process for each selection based upon his or her appraisal of the most appropriate method to be used for the selection of a director at each center.

4. The Chancellor may appoint interim directors in cases of illness, death, untimely resignation, etc., of incumbents.

5. It is the policy of the Board of Regents to conduct background investigations on all candidates recommended for interview for the position of Director. The investigations are conducted based on guidelines developed by the system office.

Appointment and Retention of Directors

A director serves at the pleasure of the Chancellor. However, it is anticipated upon appointment that a director will serve a center for a number of years. An annual salary agreement shall be issued by the Chancellor at the beginning of each fiscal year.

A director may resign at any time upon written notification to the Chancellor. A director may be terminated at any time by the Chancellor. The Chancellor shall notify the Board of vacancies in director positions.

Evaluation of Directors

Each director shall be evaluated based upon a process developed by the Chancellor. Generally, the evaluation shall be conducted annually and as a minimum shall address:

1. The director's accomplishment of annual objectives at the center.

2. The demonstrated ability of the director to serve as the leader of the center, including such factors as the ability to organize, to make decisions, to motivate others, to communicate, to maintain strong external relationships, and to develop other leaders.

3. The commitment of the director to the center and the System, and to the implementation of the Board policies.

The evaluations should be utilized to improve the administration of a director to determine compensation adjustment, and to determine future employment status.

Source: SBR Meeting, September 30, 1983; June 19, 1998

PRESIDENTS/DIRECTORS QUARTERLY

DATE: May 13, 2008 – Presidents Meeting
May 14, 2008 – Directors Meeting

AGENDA ITEM: **Talent Management (Succession Planning) and Banner/People Admin**

ACTION: Information Only

PRESENTER: Vice Chancellor Bob Adams

BACKGROUND INFORMATION:

SunGard Banner and People Admin are working together to develop a product for Talent Management (Succession Planning) that will include performance management, staff training and development, review of staffing patterns and diversity. More details will be provided as they become available.

PRESIDENTS/DIRECTORS QUARTERLY MEETINGS

DATE:	May 13, 2008 – Presidents Meeting May 14, 2008 – Directors Meeting
AGENDA ITEM:	System-wide Internal Audit External Peer Review
ACTION:	Information Item
PRESENTER:	Tammy Gourley/Blayne Clements

BACKGROUND INFORMATION:

The system internal auditors follow the standards of the Institute of Internal Auditors which require an external peer review every five years. A review is scheduled for June 2 through June 13, 2008. We will provide a brief overview of this process.

PRESIDENTS QUARTERLY MEETING

DATE: May 13, 2008 – Presidents Meeting

AGENDA ITEM: TEACH Grant Program

ACTION: Item for Discussion

PRESENTER: President Karen Bowyer

BACKGROUND INFORMATION:

President Karen Bowyer will present the attached information on the Teach Grant program.

TEACH Grant Program

The new Teacher Education Assistance for College and Higher Education (TEACH) Grant Program provides up to $4,000 per year in grants for graduate and undergraduate students to students who intend to **teach full-time** in **high-need subject areas** for at least **four years** at **schools that serve students from low-income families**.

- Undergraduate study: up to $4,000 per year for first baccalaureate to a maximum of $16,000
- Post-baccalaureate study: up to $4,000 per year for first post-baccalaureate teacher certification program, up to remaining balance of undergraduate maximum
- Graduate study: up to $4,000 per year for a Master's degree to a maximum of $8,000

If you fail to complete the 4-year teaching obligation within 8 years of completing or ceasing your program of study, you will have to repay the grant with interest.

Availability

The first TEACH Grants will be awarded to eligible students for the ([Insert school year here]) school year.

Student Eligibility Requirements

To receive a TEACH Grant you must:

- Complete the Free Application for Federal Student Aid (FAFSA) before [Insert deadline here], although you do not have to demonstrate financial need.
- Meet the general eligibility requirements for federal student aid (listed at [Insert school's financial aid Website here]).
- Be enrolled in a program of study designated as TEACH Grant-eligible. Eligible programs are those that prepare a student to teach in a high-need area. For example, a bachelor's program with a math major could qualify for a student who intends to be a math teacher. You may find a list of TEACH Grant-eligible programs of study at [Insert school's Web address here].
- Sign a TEACH Grant ***Agreement to Serve*** and respond to requests by the U.S. Department of Education confirming your continuing intention to meet the teaching obligation [Campuses may want to mention that this will be available electronically on a Department of Education Web site, or update the guidance when it becomes available].
- Complete TEACH Grant counseling [Insert institution's counseling resources here].
- For undergraduate programs, meet one of the following academic achievement requirements:
  - Score above the 75th percentile on a college admissions test (e.g. SAT, ACT, GRE, or [Insert other comparable tests]; or
  - Graduate from high school with a cumulative GPA of at least 3.25 (on a 4.0 scale) to receive a grant as a freshman; or
  - Have a cumulative GPA of at least 3.25 (on a 4.0 scale) through the most recent payment period on your college coursework to receive a grant for each subsequent term.

- For graduate programs:
  - Meet one of the following academic standards:
    - Score above the 75th percentile on a college admissions test (e.g. SAT, ACT, GRE, or [Insert other comparable tests], or
    - Have an undergraduate cumulative GPA of at least 3.25 (on a 4.0 scale) to receive a grant in the first term, or
    - Have a cumulative GPA of at least 3.25 (on a 4.0 scale) through the most recent term in the Master's degree program for subsequent payments; or
      - Be a current teacher or be a retiree from another occupation with expertise in a high-need field, enrolled in a Master's degree program; or
      - Be a former teacher pursuing an alternative route to certification within a Master's degree program.

TEACH Grant Agreement to Serve and Promise to Pay

Each year you receive a TEACH Grant, you must sign a TEACH Grant Agreement to Serve and Promise to Pay (service agreement) that will be available electronically on a Department of Education Web site. The TEACH Grant service agreement specifies the conditions under which the grant will be awarded, the teaching service requirements, and includes an acknowledgment by you that you understand that if you do not meet the teaching service requirements you must repay the grant as a Federal Direct Unsubsidized Loan, with interest accrued from the date the grant funds were first disbursed.

Teaching Obligation

To avoid repaying the TEACH Grant with interest you must be a **highly-qualified**, **full-time** teacher in a **high-need subject area** for at least **four years** at a **school serving low-income students**. You must complete the four years of teaching within eight years of finishing the program for which you received the grant. You incur a four-year teaching obligation for each educational program for which you received TEACH Grant funds, although you may work off multiple four-year obligations simultaneously under certain circumstances. Specific definitions of these terms are included below.

Highly-Qualified Teacher

You must perform the teaching service as a highly-qualified teacher, which is defined in federal law. [The definition is appended to this informational brochure.]

Full-Time Teacher

You must meet the state's definition of a full time teacher and spend the majority of your time teaching one of the high-need subject areas. Elementary teachers who teach many subjects would not be able to fulfill their service agreement.

High-Need Field

- Bilingual Education and English Language Acquisition
- Foreign Language
- Mathematics
- Reading Specialist
- Science
- Special Education
- Other teacher shortage areas documented as high-need by the Federal government, a State government, or a local education agency, approved by the U.S. Department of Education, and listed in the Department of Education's Annual Teacher Shortage Area Nationwide Listing (http://www.ed.gov/about/offices/list/ope/pol/tsa.html) at the time you begin your teaching service.

Schools Serving Low-Income Students

Schools serving low-income students include elementary or secondary schools listed in the Department of Education's Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits at https://www.tcli.ed.gov/CBSWebApp/tcli/TCLIPubSchoolSearch.jsp.

Documentation

You must respond promptly to any requests for information or documentation from the U.S. Department of Education, even if they seem repetitive. These requests will be sent to you while you are still in school as well as once you are out of school. You will be asked regularly to confirm that you either still intend to teach or that you are teaching as required. You must provide documentation to the U.S. Department of Education at the end of each year of teaching.

If you temporarily cease enrollment in your program of study or if you encounter situations that affect your ability to begin or continue teaching, you will need to stay in touch with the U.S. Department of Education to avoid your grants being converted to loans before you are able to complete your teaching obligation.

IMPORTANT REMINDER

Failure to complete the teaching obligation, respond to requests for information, or properly document your teaching service will cause the TEACH Grant to be permanently converted to a loan with interest. Once a grant is converted to a loan it can't be converted back to a grant.

FOR MORE INFORMATION

For more information about pursuing a TEACH Grant-eligible program, contact [Insert Contact Info Here].

For more information about receiving a TEACH Grant, contact [Insert Contact Info Here].

For more information about the requirements associated with a TEACH Grant, see http://www.ed.gov/about/offices/list/ope/pol/tsa.html