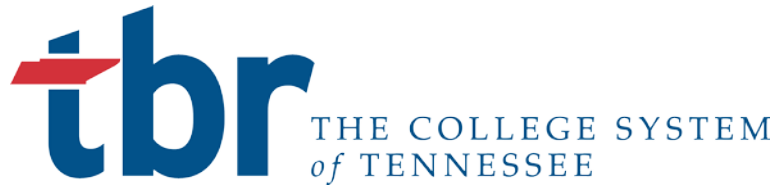


Presidents Quarterly Meeting Agenda

Wednesday, May 3, 2023

1:00 p.m. C.T. - Virtual Meeting

1. Opening Remarks – Chancellor Tydings
2. ETSU Community College Leadership Program – Dr. Rich Rhoda
Consent Agenda #1 - Russ Deaton
3. Proposed TBR Policy 2.03.01.03 Ethical Recruitment of Prospective Students and Military Affiliated Individuals - Leming
4. Proposed TBR Policy 2.03.01.04 Admission, Enrollment, and Readmission of Service Members - Leming
5. Proposed TBR Policy 2.03.02.04: Micro-credentials and Learner Record - Leming
Consent Agenda #2 – Russ Deaton
6. Proposed revisions to TBR Policy 7.01.00.00, Firearms and Other Weapons - Lapps
7. Proposed TBR Policy 6.04.00.00, Pregnancy, Childbirth, and Related Conditions (Employees) - Lapps
8. Proposed revisions to TBR Policy 5.01.01.07, Parental Leave - Lapps
9. Proposed revisions to TBR Policy, 5.01.01.14, Family, Medical, and Service Member Leave - Lapps
10. Proposed revisions to TBR Guideline P-060, Formation & Operation of Faculty Sick Leave Banks - Lapps
11. Proposed revisions to TBR Guideline P-061, Formation & Operation of Staff Sick Leave Banks - Lapps
Informational Items
12. Legislative Update – McCormick
13. Divisive Concepts Legislation Update - Lapps
14. Out-of-State Employees – Lapps
15. Juneteenth Holiday – Lapps
16. Access and Diversity Updates – Thompson
17. Other Business and Adjournment – Chancellor Tydings



**Presidents Quarterly Meeting
May 3, 2023**

SUBJECT: Proposed TBR Policy 2.03.01.03 Ethical Recruitment of Prospective Students and Military Affiliated Individuals

PRESENTER: Dr. Heidi Leming

ACTION REQUIRED: Requires Vote

Summary:

To be compliant with the requirements of federal law and Executive Order 13607, the Tennessee Board of Regents (TBR) must establish consistent policies and practices TBR institutions for the recruitment of prospective students, including military affiliated individuals (such as service members, reservists, veterans, spouses and other eligible family members).

Ethical Recruitment of Prospective Students and Military Affiliated Individuals: 2.03.01.03

Policy/Guideline Area

Student Success

Applicable Divisions

TCATs, Community Colleges

Purpose

To establish consistent policies and practices at Tennessee Board of Regents (TBR) institutions for the recruitment of prospective students, including military affiliated individuals (such as service members, reservists, veterans, spouses and other eligible family members), that are compliant with the requirements of federal law and Executive Order 13607.

Policy/Guideline

I. Introduction

- A. This policy establishes standards for recruitment for all prospective students, including military affiliated individuals at the community colleges and colleges of applied technology under the governance of the Tennessee Board of Regents.
- B. Each institution is directed to enact a policy consistent with the requirements of this policy. Alternatively, an institution may operate under this system policy. Institutional policy, and any subsequent revisions thereto, shall be submitted to the Vice Chancellor of Student Success and the Office of General Counsel for review and approval prior to final promulgation at the institution.
- C. The applicable policy regarding the recruitment of students, including military affiliated individuals, shall be stated, at minimum, in the institution's catalog or handbook and uniformly applied to all prospective students.

II. Prohibitions and Requirements

- A. No institution shall pay any commission, bonus, or other incentive payment to any person or entity engaged in any student recruiting, admission activities, or making decisions regarding the award of student financial assistance based directly, or indirectly, on

securing enrollments or federal financial aid (including military Tuition Assistance Program funds) for any prospective student, including military affiliated individuals. For purposes of this policy, a “prospective student” is any individual who has contacted, or been contacted by, the institution or its employees/agents for the purpose of communicating about enrolling at the institution and/or the availability/types of financial aid.

- B. High-pressure recruitment tactics are prohibited. “High-pressure recruitment tactics” include making multiple unsolicited contacts (3 or more), including contacts by phone, email, or in-person, and engaging in same-day recruitment and registration for the purposed of securing enrollment of prospective students, including military affiliated individuals or obtaining access to financial aid or tuition assistance funds.
- C. Institutions are prohibited from using or offering inducements for securing enrollments of prospective students or obtaining access to financial aid or tuition assistance funds. Inducements include, but are not limited to, any gratuity, favor, discount, entertainment, hospitality, loan, transportation, lodging, meals or other item having a monetary value of more than an insignificant amount, to any individual or entity, or its agents including third-party lead generators or marketing firms. This policy does not prohibit the payment of regular salaries to institutional employees or fees paid to contractors in conformity with all the applicable laws for the purpose of securing enrollments of prospective students, including military affiliated individuals or obtaining access to financial aid or tuition assistance funds.
- D. Institutions shall not make any misrepresentation(s) to prospective students, including military affiliated individuals or their family members regarding the nature of educational programs, financial charges, or employability of graduates. The prohibition shall apply to any direct or indirect contact with prospective students, including,

but not limited to, any outreach, recruitment, marketing, advertisement, or admissions operation. Institutions shall also prohibit the making or use of any false, erroneous, or misleading statements to a prospective student. Misrepresentation(s) includes any statement that has the likelihood or tendency to mislead under the circumstances, regardless of whether it is made visually, in writing, orally, or through other means.

- E. Institutions are permitted to provide information about educational institution-sponsored scholarships or grants and tuition reductions available to prospective students, including military affiliated individuals.
- F. Institutions shall educate and monitor employees and third-party agents acting on behalf of the institution regarding compliance with this policy. Persons found to have violated the terms set forth in the policy will be subject to corrective action and potential disciplinary action, up to and including termination.

Sources**Authority**

T.C.A. § 49-8-203; Executive Order 13607; 34 C.F.R. Part 668

History

TBR Board Meeting June __, 2023

Related Policies

**Presidents Quarterly Meeting
May 3, 2023**

SUBJECT: Proposed TBR Policy 2.03.01.04 Admission, Enrollment, and
Readmission of Service Members

PRESENTER: Dr. Heidi Leming

ACTION REQUIRED: Requires Vote

Summary:

To be compliant with the requirements of federal law and Executive Order 13607, the Tennessee Board of Regents (TBR) must establish consistent policies and practices at Tennessee Board of Regents (TBR) institutions applicable to eligible service members, veterans, reservists, and others covered by the Post 9/11 GI Bill and the Department of Defense Tuition Assistance Program (collectively, “service members”) for the admission, enrollment, and readmission of those returning from periods of active service.

Admission, Enrollment, and Readmission of Service Members: 2.03.01.04

Policy/Guideline Area

Student Success

Applicable Divisions

TCATs, Community Colleges

Purpose

To establish consistent policies and practices at Tennessee Board of Regents (TBR) institutions applicable to eligible service members, veterans, reservists, and others covered by the Post 9/11 GI Bill and the Department of Defense Tuition Assistance Program (collectively, “service members”) for the admission, enrollment, and readmission of those returning from periods of active service that are compliant with the requirements of federal law and Executive Order 13607.

Policy Statement

- I. Admission and Enrollment of Service Members
 - I. Service Members shall be admitted as students pursuant to the same standards and policies applicable to all other applicants for admission.
- II. Special Provisions and Services for Service Members Applying for Admission and Financial Aid Pursuant to the Post 9/11 GI Bill and the Department of Defense Tuition Assistance Programs
 - I. An institution may enact an institutional policy consistent with the requirements of this policy. Alternatively, an institution may operate under this system policy. An institutional policy, and/or any amendment thereof, shall be submitted to the Vice Chancellor for Student Success and the Office of General Counsel for review and approval prior to promulgation.
 - II. Each institution shall designate a point of contact for academic and financial advising (including access to disability counseling) to assist service members with the successful completion of their studies and with their job searches.
 - III. Service members, eligible for the Department of Defense Tuition Assistance Program (“TA”) must be directed to the appropriate Education Service Officer of the applicable branch of the armed forces to determine branch-specific eligibility criteria prior to enrollment in courses.

- IV. The institution shall inform service members that they are responsible for the timely submission of requests for TA to the appropriate Education Service Officer prior to enrollment and that they will be responsible for payment of the costs of tuition and fees if they fail to receive TA approval prior to branch-specific TA deadlines.
- V. The institution shall provide prospective student service members who are eligible to receive Federal military and veterans educational benefits with a personalized and standardized form to help those prospective students understand the total cost of the educational program, including tuition and fees; the amount of that cost that will be covered by Federal educational benefits; the type and amount of financial aid they may qualify for; their estimated student loan debt upon graduation; information about student outcomes; and other information to facilitate comparison of aid packages offered by different educational institutions.
- VI. The institution shall provide prospective student service members who are eligible to receive Federal military and veterans education benefits information about the availability of state financial aid and federal financial aid before arranging any private student loans or alternative financing programs.
- VII. The institution shall provide refunds in accordance with the refund of unearned student aid rules applicable to Federal student aid provided through the Department of Education under Title IV of the Higher Education Act of 1965, as required under section 484B of that Act when students withdraw prior to course completion.
- VIII. The institution shall provide educational plans for all service members using Federal military and veterans education benefits that detail how they will fulfill all the requirements necessary to graduate and the expected timeline of completion. Such educational plans are permitted to be consistent with educational plans provided to other students.

III. Readmission of Service Members

- A. Institutions shall take the following actions relating to readmission of service members.
 - 1. Designate one or more offices that a service member may contact regarding notice of the need to suspend educational efforts and to request readmission.
 - 2. Accept any reasonable notice of intent to reenroll and not require that the notice of intent to return be provided in any particular form.
 - 3. Promptly readmit a service member who meets the requirements of this policy with the same academic status as when they last attended or were accepted for admission to the college prior to deployment for military service.
- B. Service members requirements:
 - 1. When possible, the service member, or an appropriate officer of the Department of Defense, must provide oral or written notice to the institution's designated office or contact that the reason for withdrawal from enrollment is due to receipt of orders or instructions to report for military service of at least 30 days. Notice must be provided as far in advance as reasonably possible and prior to withdrawal unless precluded from doing so by the military, e.g. service related to a classified mission, etc.
 - 2. When notice cannot reasonably be provided prior to the date of withdrawal, the service member may submit an attestation of military service that necessitated the absence from school at the time of readmission.
 - 3. Pre-withdrawal notice does not have to indicate whether the service member, intends to return to the school and may not be subject to any rule of timeliness. Timeliness must only be determined by the facts in each case.

4. The service member, must provide notice of intent to re-enroll, along with documentation that eligibility for admission has not been terminated for a dishonorable discharge or other disqualifying event, after an absence of no longer than 5 years and;
 - a. Within 3 years of completion of service or
 - b. Within 2 years of the completion of any convalescence for any injury or illness related to their service.

C. For purposes of this policy prompt readmission is:

1. Re-enrollment in the next available class in the same or most similar program as that in which the service member was enrolled prior to withdrawal;
2. With the same enrollment status (e.g., full-time), unless the service member requests or agrees to a different enrollment status;
3. With the same academic status as before withdrawal;
4. With the same academic progress as before withdrawal, unless the service member is admitted to a different program and the hours are not transferable; and
5. With the same number of credit or clock hours as had been completed before withdrawal.

D. Exceptions to the prompt readmission requirement include:

1. When the service member fails to meet the requirements of section III above. In such circumstances however, the service member shall be permitted to be readmitted pursuant to the same policies or requirements as all regular students.
2. When the institution reasonably determines that the service member is not prepared to return to their program of study at the status, rank, and/or level of academic progress

previously achieved or is unable to complete the program, provided the institution has made reasonable efforts, at no extra cost to the student, to prepare the student to re-enroll. The institution shall bear the burden of proof in establishing that the service member is not prepared to resume their course of study at the level obtained prior to withdrawal.

3. When the service member requests to enroll in a different program, or
4. When the service member requests to re-enter their program of study at the beginning, or at any earlier point, of the program of study.

E. Tuition Upon Readmission

1. The tuition and fees charged the service member for the first academic year upon readmission shall be:
 - a. The same as that charged at the time of withdrawal;
 - b. Up to the limit of available TA benefits if not greater than that charged to other students; or
 - c. If starting in a new program, the same tuition and fees charged to other students in that program.
2. For subsequent academic years or for a different program, the tuition and fees shall not be more than the standard charges for other students.

- IV. The provisions of federal law requiring or otherwise relating to this policy shall supersede any state laws to the contrary.

Sources

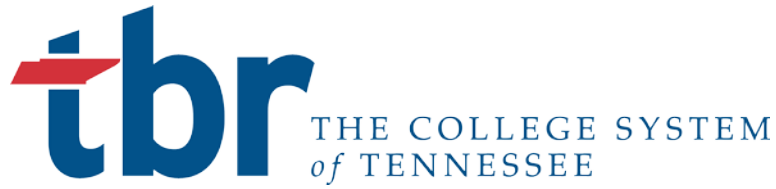
Authority

Executive Order 13607; Post-9/11 GI Bill; Department of Defense Tuition Assistance Program

History

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Related Policies



**Presidents Quarterly Meeting
May 3, 2023**

SUBJECT: Proposed TBR Policy 2.03.02.04: Micro-credentials and Learner Record

PRESENTER: Dr. Heidi Leming

ACTION REQUIRED: Requires Vote

Summary:

This Policy sets out the principles and procedures for quality assurance of the TBR institutions' micro-credentials that are included on the System's comprehensive learner record. The principles and procedures include, but are not limited to design, approval, delivery, monitoring, and review.

TBR Policy 2.03.02.04 Micro-Credentials and Learner Records

Policy/Guideline Area

Academic Policies

Applicable Divisions

Community Colleges and Technical Colleges

Purpose

This Policy sets out the principles and procedures for quality assurance of the TBR institutions' micro-credentials that are included on the System's comprehensive learner record. The principles and procedures include, but are not limited to design, approval, delivery, monitoring, and review.

Policy/Guideline

Definitions

Assertion: the digital credential or claim the earner receives and serves as the record of their achievement. The assertion contains all general information of the badge and what makes it a unique instance of the badge, the identity of the badge recipient, and optionally a link to evidence, a narrative, and an expiration date.

Assessment: a process that ensures appropriate rigor and expertise to evaluate a learning activity to determine to what extent learning may have occurred.

Badges (Digital): online representations that recognize skills, achievements, membership affiliation, and participation. Badges are the visual representation issued to students upon successful completion of a micro-credential or demonstrated accomplishment or skill.

Certificate: certificates are academic programs based on a free-standing body of knowledge, often interdisciplinary in nature. They typically have a minimum number of credits, and are smaller than major programs of study. Certificates can be comprised of micro-credentials that culminate in the awarding of a certificate. Institutions should follow guidance found in [TBR Policy 2.01.01.00 II.B.4a](#), on academic actions required for certificate programs.

Credit Hour: A credit hour is an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency. [SACS-COC policy](#) and [COE Objectives 2-A-6 and 2-A-7](#) follow the federal definition of the credit hour.

Alternative Credentials: non-degree credentials offered by TBR institutions may include a myriad of credit alternatives including Massive Open Online Courses (MOOCs), micro-credentials (badges), credit- or non-credit bearing certificate programs and various other opportunities. Typically issued in a digital format.

Digital credentials: digital insignia that can be stored and shared virtually to show accomplishment of learning, skills, and knowledge.

Learning outcomes: the expression of the set of knowledge and skills, and the application of the knowledge and skills a person has acquired and is able to demonstrate as a result of learning through measurable assessments and standards.

Micro-credential: a certification of an individual's discrete learning and achievements. Micro-credentials are often aligned to industry or other professional needs and, in some instances, may be used to provide credit towards formal qualifications. Micro-credentials are certified through assignment of a digital credential and associated metadata. A micro-credential offered by a TBR institution should be asserted by a recognized campus authority.

Micro-credential Programs: largely stand-alone programs created to provide professional development opportunities to equip enrollees with specific knowledge, skills, and proficiencies. The credentials may be either credit-bearing or non-credit bearing. Micro-credentials allow institutions to recognize a learners' skills and accomplishments in ways that are verifiable. Micro-credentials are less than a technical certificate (less than 15 credit hours or 300 clock hours). Schools and programs may consider implementation of additional admissions standards for credentials that are transferable toward a certificate or degree program.

For-credit learning: college-level courses, often stackable toward a certificate and/or degree program. Courses must follow the credit or clock hour policy for earned hours.

Not-for-credit learning: courses or other learning experiences that do not result in a learner earning academic credit, which do not typically appear on an academic transcript, and may be recognized through other means. Learning may be offered in a variety of formats ranging from stand-alone courses to a series of courses or modules, focused on a specialized set of competencies. Non-credit micro-credential programs are not directly transferrable toward a certificate or degree program.

Third Party micro-credential provider: an arrangement made with another party in the provision of higher education, including placements and joint award of qualifications. All third parties who design and deliver a micro-credential on behalf of a TBR institution must adhere to this policy.

Verifiable: confirmation that a credential is authentic, accurate, and legitimate and has been awarded by an institution to a specific learner. Verifiable credentials can protect against credential fraud and increase trust in the credential being awarded. Any credential listed on a TBR Learner Record must be verified.

A. Awarding of Credit for Degree-Seeking Programs

I. Admission

- a. For the purposes of institutional and governmental reporting obligations, a learner taking a micro-credential course does not meet the definition of any degree or certificate seeking student.
- b. If a learner wishes to pursue a formal degree-seeking program, clear information should be provided about official admission application

requirements that exist, including whether or not micro-credential credits may transfer to the degree program, and if so, which degree-program requirements they might fulfill.

- II. Credit arrangements for micro-credentials may be established. Eligibility for formal credit will be assessed according to TBR Policy [TBR Policy 2.01.00.04 and any applicable College policies and procedures](#).
- III. Schools may determine advanced standing equivalencies, if applicable, for non-credit and for-credit micro-credential programs.
- IV. Upon successful completion of micro-credential program requirements, digital acknowledgement of achievement will be granted to students.
- V. Programs are encouraged to develop ways for micro-credentials to be highly visible, with connections to professional networks and leveraged as much as possible.
- VI. Micro-credentials will usually be an open “public” offering. However, in some circumstances, micro-credentials will have restricted entry, for example an industry partner offering, or specific entry requirements.
- VII. There is no limit to the number of micro-credentials a student may earn.
- VIII. Students enrolled in a micro-credential credit-bearing program must have a cumulative GPA of at least 2.0 for successful completion of the program.

B. Micro-credential Program Duration

- I. For-credit micro-credential programs are generally 15 or fewer credit hours. Non-credit micro-credentials vary in length.
- II. Micro-credential programs should balance time-to-completion considerations (either credit hours, units, etc.) with the time necessary for students to demonstrate competency and achievement of program outcomes.
- III. Micro-credential programs should enable participants to achieve program outcomes in as timely a manner as possible.

C. Tuition and Aid

- I. Micro-credential programs pursued as stand-alone programs do not qualify for federal financial aid. Micro-credential participants may apply for other forms of funding that may be available. However, some micro-credential programs may be completed while students are pursuing a degree. Those degree-seeking students may be eligible for federal financial aid.
- II. Innovative pricing models are encouraged to make programs widely accessible given that federal financial aid is generally not available to participants. TBR institutions should seek guidance and approval from the TBR System Office prior to implementing new models.
- III. Micro-credentials embedded into credit-bearing degree pathways are eligible for federal financial aid.

D. Micro-credential Program Design and Delivery

- I. When designing and delivering for-credit offerings, the following principles must be adhered to:
 - a. for-credit learning must align with the strategic directions of the College and the relevant Faculty / Department / School / Office;
 - b. for-credit learning must be financially viable, with due consideration given to design and delivery costs and other factors as appropriate to the Faculty / Department / School / Office;
 - c. admission requirements to a for-credit learning or micro-credential program will be determined as part of the approval process specified in Part A of this policy;

- d. any for-credit learning must be consistent with the requirements of [TBR Policy 2.01.00.04](#)
- e. when and how credentials may be stacked together should be included in institutional policies and approved in accordance with TBR Policy 2.01.01.00 II B.
- f. in cases of for-credit learning and micro-credential programs, learning outcomes aligned [to SACS-COC's Policy on Quality and Integrity of Educational Credentials](#) and SACS-COC Principle 8.2a must be developed; task(s) must be set to assure the attainment of the learning outcomes; and
- g. credit must be based on the hours it will take for participants to successfully complete the micro-credential using the following standards:
 - i. The basis for the assignment of credit is defined federally as not less than one hour each week for approximately 15 weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit, or the equivalent amount of work over a different amount of time; or
 - ii. At least an equivalent amount of work as required outlined above for other academic activities as established by the institution including laboratory work, internships, practicums, studio work, and other academic work leading to the award of credit hours.

E. Model Framework for Micro-Credentials

- I. Each institution must establish a model for faculty oversight regarding the review, approval, and verification of micro-credentials. Institutions should determine their specific needs and consider whether different information should be collected and approval workflows established between credit-bearing or non-credit micro-credentials. An institutional model framework or proposal form should contain information regarding:
 - a. Program title
 - b. Program description
 - c. Issuing entity type (credit or non-credit)
 - d. Requirements
 - e. Criteria
 - f. Evidence (demonstrations or examples of criteria to be met)
 - g. Assessment protocol
 - h. Effective date
 - i. Expiration date (if applicable)
 - j. Learning outcomes
 - k. Alignment with external standards and competency frameworks
 - l. Description of the timing of how the micro-credential can be earned and when a learner can begin and finish the credential (traditional semester/quarter model or on-demand)
 - m. Clock or credit hours, if applicable

F. Recording micro-credentials in student record

- a. Certifications and micro-credentials should be recorded on the STDGVC screen in Banner
- b. Micro-credentials will be titled "*name* Credential" in the student information system

E. Micro-credential Program Assessment and Effectiveness

- I. Micro-credential programs and courses should be reviewed annually by the creating school to ensure continued viability. This cyclical review will ensure that programs remain effective at meeting students' educational needs. Updates to the curriculum, courses and teaching strategies should be implemented regularly in the pursuit of continuous improvement.
- II. All courses should be reviewed prior to release to students to ensure effective design and delivery strategies are in place to support engaging learning experiences and student achievement of learning objectives.
- III. Instructors who teach online micro-credential courses should first complete professional development to ensure they are prepared to teach students in the online learning environment.

Exhibits

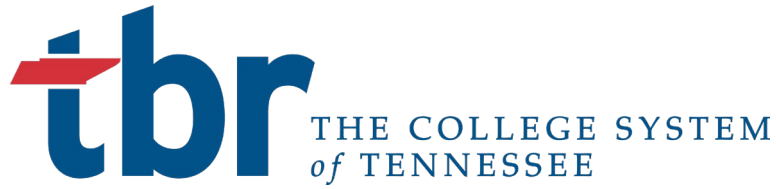
Sources

[AACRAO's Alternative Credentials: Considerations, Guidance, and Best Practices \(2022\)](#)

Reference [TBR Policy 2.01.00.04](#) related to Awarding of Credits Earned Through Extra-Institutional Learning to Community Colleges

Reference [TBR Policy 2.01.01.00](#) related to Approval of Academic Programs, Units, and Modifications

SACSCOC's policy statement on the "[Quality and Integrity of Educational Credentials](#)" per [SACSCOC policy on CBE COE Objectives 2-A-6 and 2-A-7](#)



**Presidents Quarterly Meeting
May 3, 2023**

SUBJECT:	Revisions to TBR Policy 7.01.00.00, Firearms and Other Weapons
PRESENTER:	Brian Lapps
ACTION REQUIRED:	Requires Vote

Summary:

The proposed revisions to this policy are to comply with Public Chapter 149, effective July 1, 2023. The act permits a part-time employee who is a retired law enforcement officer in good standing with at least 20 years of service to carry a handgun under the same terms and conditions as full-time employees.

Firearms and Other Weapons:

7.01.00.00

Policy/Guideline Area

Safety and Security

Applicable Divisions

TCATs, Community Colleges, System Office, Board Members

Purpose

To maintain a safe educational and working environment for students and employees by establishing rules for possessing and carrying firearms and other weapons on TBR institution property.

Definitions

As used in this policy:

- "Carry" means to physically transport a firearm or other weapon on or about the body.
- "Concealed" means not visible to ordinary observation.
- "Eligible Retired Law Enforcement Employee" includes all faculty, executive, administrative, professional and support staff who are retired federal, state, or local law enforcement officers; served as a federal, state, or local law enforcement officer for at least twenty (20) years prior to retirement; retired in good standing as certified by the chief law enforcement officer of the organization from which the officer retired; is employed on a part-time basis by a TBR institution; and is not enrolled as a student at the institution.
- "Employee" means all faculty, executive, administrative, professional and support staff employed in the service of and whose compensation is paid by a TBR institution. "Employee" does not include independent contractors who provide goods or services to the institution or student workers as defined in TBR Policy 5.01.01.00.
- "Full-time Employee" includes all faculty, executive, administrative, professional and support staff who are employed on a full-time basis

by a TBR institution, but does NOT include a person who is enrolled as a student at the institution, regardless of whether the person is also an employee. A full-time employee is one who has a regular work week of at least 37.5 hours, or who is scheduled to carry a full teaching load or its equivalent. This includes full-time modified fiscal year (MODFY) employees, temporary employees and term appointees who have a regular work week of at least 37.5 hours or are scheduled to carry a full teaching load or its equivalent. "Full-time Employee" does NOT include independent contractors who provide goods or services to the institution. For example, if an institution contracts for custodial services or food services, the contractor's employees are NOT allowed to carry a handgun on the premises, even if they work on the premises full time.

- "Enrolled as a Student" as used in the definition of "Full-time Employee" and "Eligible Retired Law Enforcement Employee" means to be registered for an academic offering at the TBR institution where one is employed, whether or not the academic offering is offered for credit or is not for credit. "Enrolled as a Student" does not include being registered for an academic offering that is delivered solely online, with no requirement for the student to appear on campus in order to complete the course.
- "Firearm" means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.
- "Handgun" means any firearm with a barrel length of less than twelve inches (12") that is designed, made or adapted to be fired with one (1) hand.
- "Institution Property" means all land, ground, structures, and any other real property owned, operated or controlled by a TBR institution.

- "Motor Vehicle" means a motor vehicle as defined in T.C.A. § 55-1-103.
- "On or About the Person" means carried concealed on the person or carried concealed in a handbag, briefcase or other carrying case that remains within an arm's reach of the person at all times.
- "Parking Area" means property provided by the TBR institution for the purpose of permitting employees, students, or invitees to park motor vehicles.
- "Possess" means either: (1) direct physical control over a firearm or other weapon at a given time; or (2) the power and intention at any given time to exercise dominion and control over a firearm or other weapon. Examples of possessing a firearm or other weapon include, without limitation, the presence of a firearm or other weapon on or about the person of the employee or in the employee's motor vehicle, desk, lunch box, locker, tool kit, bag, purse, cabinet, or office.
- "Student" means any person who is admitted and/or registered for study at a TBR institution for the current academic period. This shall include any period of time following admission and/or registration, but preceding the start of classes for any academic period. It will also include any period which follows the end of an academic period through the last day for registration for the succeeding academic period, and during any period while the student is under suspension from the institution.
- "Valid Handgun Carry Permit" or "Enhanced Handgun Carry Permit" means a current handgun carry permit issued by the State of Tennessee under T.C.A. § 39-17-1351 or issued by another state that has been given reciprocity under T.C.A. § 39-17-1351(r).
- "Weapon" means firearm; explosive; explosive weapon; bowie knife; hawk bill knife; ice pick; dagger; slingshot; leaded cane; switchblade knife; blackjack; metal knuckles; razors and razor blades, except those used solely for personal shaving; any sharp pointed or edged

instrument, except unaltered nail files and clips and tools used solely for preparation of food instruction and maintenance; or any other weapon of like kind, not used solely for instructional or school-sanctioned ceremonial purposes.

Policy/Guideline

I. [General Prohibition.](#)

- A. Except as otherwise provided in this policy, possession of firearms or other weapons on institution property is prohibited. (T.C.A. § 39-17-1309). (See Exhibit 1, Guide to Gun Laws on Campus). The permitless/constitutional carry legislation, T.C.A. § 39-17-1307(g), does NOT allow permitless/constitutional carry on TBR property. The requirements of T.C.A. § 39-17-1309 and this policy remain in effect.

II. [Exceptions for Employees with Valid Handgun Carry Permits/Enhanced Handgun Carry Permits.](#)

- A. In accordance with T.C.A. § 39-17-1309(e)(11) and subject to the limitations set forth in this policy, full-time employees and eligible retired law enforcement employees who possess a valid handgun carry permit/enhanced handgun carry permit and are authorized to carry a handgun under T.C.A. § 39-17-1351 may carry a handgun on property owned, operated, or controlled by the TBR institution at which they are employed, provided that they are not permitted to carry a handgun openly or in any manner in which the handgun is visible to ordinary observation, unless the employee is carrying, displaying, or employing the handgun in justifiable self-defense or in justifiable defense of another during the commission of a crime in which the employee or other person defended was a victim.

1. Employees who intend to exercise this right to carry a handgun must first register with the law enforcement agencies that have jurisdiction over the institution, which may be identified by their employing institution. If an institution has locations in more than one jurisdiction, the employee must register with the law enforcement agency in each jurisdiction where they intend to carry on campus. (See Exhibit 2, Handgun Carry Notification & Summary of Campus Concealed Carry Rights & Responsibilities).
2. The registering employees' names and other identifying information shall be confidential, not open for public inspection and shall not be disclosed except to the administrative officer of the institution responsible for security of the institution. However, that administrative officer will not be provided with the names or other identifying information of employees under their direct supervision or for whom they evaluate job performance.
3. The institution's designated law enforcement agency shall develop and implement policies and procedures regarding the registration and confidentiality.
4. Registered employees may not carry a handgun on the property of any TBR institution other than their employing institution. If two or more institutions share a property, properly

registered employees of all sharing institutions may carry on the shared property.

5. Employees who elect to carry a handgun under T.C.A. § 39-17-1309(e)(11) shall have their valid handgun carry permit/enhanced handgun carry permit in their immediate possession at all times when carrying a handgun and shall display the permit on demand of a law enforcement officer.
6. Except for eligible retired law enforcement employees, part-time employees may not carry a handgun on institution property, even if they have carry permits.
7. The institution's designated law enforcement agency may develop and implement a course or courses to be offered to employees electing to carry a handgun under T.C.A. § 39-17-1309(e)(11). Firearm safety shall be a component of any such course offered. Institutions are not required to offer such courses. Employees are not required to participate in such courses if they are offered.
8. Employees who elect to carry a handgun under T.C.A. § 39-17-1309(e)(11) are not permitted to carry a handgun at the following times and at the following locations:
 - a. Stadiums, gymnasiums, and auditoriums when school-sponsored events are in progress, such as ball games; pep rallies; convocations; graduations; concerts,

plays and other entertainment; etc.
This includes such events that are sponsored by recognized student organizations.

- b. Formal meetings regarding employee or student disciplinary matters.
- c. Formal meetings regarding tenure issues.
- d. A hospital, or an office where medical or mental health services are the primary services provided, such as a clinic, student health center or a mental health counseling center.
- e. Any location where a provision of state or federal law prohibits the carrying of a handgun on that property, including, but not limited to:
 - (1) On the premises of a child care agency, in any vehicle used by a child care agency to transport children, or in the presence of a child being cared for by a child care agency, such as a campus day care center. (Source: Rules of the Tennessee

Department of Human Services, Chapter 1240-04-03, Licensure Rules for Child Care Centers);

- (2) In or on any public K-12 school building, bus, school campus, grounds, recreation area, athletic field or any other property owned, operated, or while in use by any K-12 board of education, school, or directors for the administration of any public or private K-12 educational institution. This includes buildings or parts of buildings that are dedicated to use by a campus K-12 school, middle college, etc.

(Source: T.C.A. § 39-17-1309);

- (3) In or on any building, bus, campus, grounds, recreation area, athletic field or any other property owned, operated, or while in use by a private institution

of higher education that prohibits possession of firearms on its property. For example, if a TBR institution operates in a facility shared with a private institution of higher education that prohibits firearms on its property, a TBR employee will not be able to carry a handgun into the portion of the facility controlled by the private institution.

(Source: T.C.A. § 39-17-1309);

- (4) A public park, playground, civic center or other building facility, area or property which, at the time of the employee's possession of a handgun, the employee knows or should know is being used by board of education, school, college or university board of trustees, regents, or directors for

the administration of
any public or private
educational institution
for the purpose of
conducting an athletic
event or other school-
related activity on an
athletic field, permanent
or temporary, including
but not limited to, a
football or soccer field,
tennis court, basketball
court, track, running
trail, Frisbee field, or
similar multi-use field
(Source: T.C.A. § 39-17-
1311); and

(5) A federal facility.
(Source: 18 United
States Code § 1930).

f. Property leased to the institution, if
the lessor has prohibited the
possession of firearms on the
premises.

9. The employee shall not possess a handgun:

- a. While under the influence of alcohol
or any controlled substance or
controlled substance analogue
(Source: T.C.A. § 39-17-1321); or
- b. While consuming liquor, wine, beer,
or other alcoholic beverage within

the confines of an establishment open to the public where liquor, wine, beer, or other alcoholic beverages are served for consumption on the premises.

(Source: T.C.A. § 39-17-1321)

10. Employees who elect to carry a handgun under T.C.A. § 39-17-1309(e)(11) shall not disclose the fact that they are carrying a handgun with the intent to intimidate or threaten other employees, students or third parties.

- B. When on the premises of the TBR institution where they are employed, employees who are registered to carry a handgun on the premises under T.C.A. § 39-17-1309(e)(11) and this policy must have the handgun either:

1. On or about their person, which means that the gun must be carried concealed on the person or it must be carried concealed in a handbag, briefcase or other carrying case that remains within an arm's reach of the person at all times; or
2. Secured in their personal motor vehicle in accordance with Section III.A of this policy and T.C.A. § 39-17-1313.

III. Other Exceptions to the Prohibition on Weapons

- A. Any adult with an enhanced handgun carry permit, concealed handgun carry permit, or who lawfully carries a handgun pursuant to T.C.A. § 39-17-1307(g) may, unless expressly prohibited by federal law, transport and store a

firearm or firearm ammunition in the person's motor vehicle while on or utilizing a parking area if:

1. The person's motor vehicle is parked in a location where it is permitted to be, and
 2. The firearm or ammunition being transported or stored in the motor vehicle:
 - a. Is kept from ordinary observation if the person is in the motor vehicle; or
 - b. Is kept from ordinary observation and locked within the trunk, glove box, or interior of the motor vehicle or a container securely affixed to such motor vehicle if the person is not in the motor vehicle.
 3. A person transporting, storing or both transporting and storing a firearm or firearm ammunition in accordance with this policy does not violate this policy or the law if the firearm or firearm ammunition is observed by another person or security device during the ordinary course of securing the firearm or firearm ammunition from observation in or on a motor vehicle.
- B. A person may possess or carry a firearm or other weapon used solely for instructional or school-sanctioned ceremonial purposes on institution property.
- C. Persons employed in the Army, Air Force, Navy, Coast Guard or Marine service of the United States or any member of the Tennessee National Guard, when in the discharge of their official duties and acting under orders

requiring them to carry arms or weapons, may possess the weapons required by the orders.

- D. Civil officers of the United States in the discharge of their official duties may possess required weapons.
- E. Officers and soldiers of the militia and the National Guard, when called into actual service, may possess required weapons.
- F. POST-certified, active-duty law enforcement officers, whether on or off duty, may possess and carry their service firearm on institution property.

IV. [Right to Search for Weapons](#)

- A. Any TBR institution has the right to search for illegally possessed weapons in any area on the institution's premises, including, but not limited to, lockers, furniture, containers, drawers, equipment or other facilities, lunch boxes, brief cases, personal bags, personal toolboxes or tool kits, parking lots, TBR vehicles and other vehicles parked on the institution's premises.

- 1. **Such searches may only be conducted by law enforcement officers.**

V. [Violations and Sanctions](#)

- A. Violation of this policy and/or the applicable laws regarding possession of firearms or other weapons on TBR institution property may result in disciplinary action, up to and including immediate termination of employment or expulsion from the institution. Violation of applicable laws may also result in referral to a law enforcement agency, arrest, and/or prosecution. An institution's response to a violation of this policy and/or applicable law will be based on the totality of the circumstances, including, but not limited to, any threat posed by such violation; whether the



violation was intentional or inadvertent; and any history of non-compliance with this policy.

- B. No TBR institution shall take any adverse employment or disciplinary action against an employee or student based solely on the fact that the person has carried a handgun on TBR institution property in compliance with T.C.A. § 39-17-1309(e)(11) and this policy or stored a firearm or firearm ammunition in a motor vehicle on institution property in compliance with T.C.A. § 39-17-1313. T.C.A. § 49-7-163.

VI. [Limitations of Liability](#)

- A. Unless carrying a handgun is a requirement of the employee's job description, the carrying of a handgun as allowed by T.C.A. § 39-17-1309(e)(11) is a personal choice of the employee and not a requirement of the employing institution. Consequently, an employee is not:
 - 1. Acting in the course of or scope of their employment when carrying or using the handgun;
 - 2. Entitled to workers' compensation benefits under T.C.A. § 9-8-307(a)(1)(K) for injuries arising from the carrying or use of a handgun; or
 - 3. Immune from personal liability with respect to use or carrying of a handgun under T.C.A. § 9-8-307(h).
- B. A TBR institution is absolutely immune from claims for monetary damages arising solely from or related to an employee's use of, or failure to use, a handgun by an employee of that institution who has elected to carry a handgun under T.C.A. § 39-17-1309(e)(11).

Exhibits

-  [Exhibit 1 - Guide to Gun Laws on Campus](#)(pdf /75.89 KB)
-  [Exhibit 2 - Handgun Notification Form & Summary](#)(pdf /146.28 KB)

Sources

Authority

T.C.A. § 49-8-203; All State and Federal Statutes, Acts, Codes, Rules and Regulations referenced in this policy; Tennessee Department of Human Services Rule, Chapter 1240-04-03.

History

NEW Policy Adoption; TBR Board Meeting, June 23, 2016, effective July 1, 2016. Revision approved by Board September 15, 2016; October 29, 2020 Updated Exhibit 1; Revision approved by Board June 18, 2021 effective July 1, 2021; Revision approved by Board September 23, 2022; Revision approved by Board June __, 2023 effective July 1, 2023.

Firearms and Other Weapons:

7.01.00.00

Policy/Guideline Area

Safety and Security

Applicable Divisions

TCATs, Community Colleges, System Office, Board Members

Purpose

To maintain a safe educational and working environment for students and employees by establishing rules for possessing and carrying firearms and other weapons on TBR institution property.

Definitions

As used in this policy:

- "Carry" means to physically transport a firearm or other weapon on or about the body.
- "Concealed" means not visible to ordinary observation.
- "Eligible Retired Law Enforcement Employee" includes all faculty, executive, administrative, professional and support staff who are retired federal, state, or local law enforcement officers; served as a federal, state, or local law enforcement officer for at least twenty (20) years prior to retirement; retired in good standing as certified by the chief law enforcement officer of the organization from which the officer retired; is employed on a part-time basis by a TBR institution; and is not enrolled as a student at the institution.
- "Employee" means all faculty, executive, administrative, professional and support staff employed in the service of and whose compensation is paid by a TBR institution. "Employee" does not include independent contractors who provide goods or services to the institution or student workers as defined in TBR Policy 5.01.01.00.
- "Full-time Employee" includes all faculty, executive, administrative, professional and support staff who are employed on a full-time basis

by a TBR institution, but does NOT include a person who is enrolled as a student at the institution, regardless of whether the person is also an employee. A full-time employee is one who has a regular work week of at least 37.5 hours, or who is scheduled to carry a full teaching load or its equivalent. This includes full-time modified fiscal year (MODFY) employees, temporary employees and term appointees who have a regular work week of at least 37.5 hours or are scheduled to carry a full teaching load or its equivalent. "Full-time Employee" does NOT include independent contractors who provide goods or services to the institution. For example, if an institution contracts for custodial services or food services, the contractor's employees are NOT allowed to carry a handgun on the premises, even if they work on the premises full time.

- "Enrolled as a Student" as used in the definition of "Full-time Employee" and "Eligible Retired Law Enforcement Employee" means to be registered for an academic offering at the TBR institution where one is employed, whether or not the academic offering is offered for credit or is not for credit. "Enrolled as a Student" does not include being registered for an academic offering that is delivered solely online, with no requirement for the student to appear on campus in order to complete the course.
- "Firearm" means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.
- "Handgun" means any firearm with a barrel length of less than twelve inches (12") that is designed, made or adapted to be fired with one (1) hand.
- "Institution Property" means all land, ground, structures, and any other real property owned, operated or controlled by a TBR institution.

- "Motor Vehicle" means a motor vehicle as defined in T.C.A. § 55-1-103.
- "On or About the Person" means carried concealed on the person or carried concealed in a handbag, briefcase or other carrying case that remains within an arm's reach of the person at all times.
- "Parking Area" means property provided by the TBR institution for the purpose of permitting employees, students, or invitees to park motor vehicles.
- "Possess" means either: (1) direct physical control over a firearm or other weapon at a given time; or (2) the power and intention at any given time to exercise dominion and control over a firearm or other weapon. Examples of possessing a firearm or other weapon include, without limitation, the presence of a firearm or other weapon on or about the person of the employee or in the employee's motor vehicle, desk, lunch box, locker, tool kit, bag, purse, cabinet, or office.
- "Student" means any person who is admitted and/or registered for study at a TBR institution for the current academic period. This shall include any period of time following admission and/or registration, but preceding the start of classes for any academic period. It will also include any period which follows the end of an academic period through the last day for registration for the succeeding academic period, and during any period while the student is under suspension from the institution.
- "Valid Handgun Carry Permit" or "Enhanced Handgun Carry Permit" means a current handgun carry permit issued by the State of Tennessee under T.C.A. § 39-17-1351 or issued by another state that has been given reciprocity under T.C.A. § 39-17-1351(r).
- "Weapon" means firearm; explosive; explosive weapon; bowie knife; hawk bill knife; ice pick; dagger; slingshot; leaded cane; switchblade knife; blackjack; metal knuckles; razors and razor blades, except those used solely for personal shaving; any sharp pointed or edged

instrument, except unaltered nail files and clips and tools used solely for preparation of food instruction and maintenance; or any other weapon of like kind, not used solely for instructional or school-sanctioned ceremonial purposes.

Policy/Guideline

VII. [General Prohibition.](#)

- A. Except as otherwise provided in this policy, possession of firearms or other weapons on institution property is prohibited. (T.C.A. § 39-17-1309). (See Exhibit 1, Guide to Gun Laws on Campus). The permitless/constitutional carry legislation, T.C.A. § 39-17-1307(g), does NOT allow permitless/constitutional carry on TBR property. The requirements of T.C.A. § 39-17-1309 and this policy remain in effect.

VIII. [Exceptions for Employees with Valid Handgun Carry Permits/Enhanced Handgun Carry Permits.](#)

- A. In accordance with T.C.A. § 39-17-1309(e)(11) and subject to the limitations set forth in this policy, full-time employees and eligible retired law enforcement employees who possess a valid handgun carry permit/enhanced handgun carry permit and are authorized to carry a handgun under T.C.A. § 39-17-1351 may carry a handgun on property owned, operated, or controlled by the TBR institution at which they are employed, provided that they are not permitted to carry a handgun openly or in any manner in which the handgun is visible to ordinary observation, unless the employee is carrying, displaying, or employing the handgun in justifiable self-defense or in justifiable defense of another during the commission of a crime in which the employee or other person defended was a victim.

1. Employees who intend to exercise this right to carry a handgun must first register with the law enforcement agencies that have jurisdiction over the institution, which may be identified by their employing institution. If an institution has locations in more than one jurisdiction, the employee must register with the law enforcement agency in each jurisdiction where they intend to carry on campus. (See Exhibit 2, Handgun Carry Notification & Summary of Campus Concealed Carry Rights & Responsibilities).
2. The registering employees' names and other identifying information shall be confidential, not open for public inspection and shall not be disclosed except to the administrative officer of the institution responsible for security of the institution. However, that administrative officer will not be provided with the names or other identifying information of employees under their direct supervision or for whom they evaluate job performance.
3. The institution's designated law enforcement agency shall develop and implement policies and procedures regarding the registration and confidentiality.
4. Registered employees may not carry a handgun on the property of any TBR institution other than their employing institution. If two or more institutions share a property, properly

registered employees of all sharing institutions may carry on the shared property.

5. Employees who elect to carry a handgun under T.C.A. § 39-17-1309(e)(11) shall have their valid handgun carry permit/enhanced handgun carry permit in their immediate possession at all times when carrying a handgun and shall display the permit on demand of a law enforcement officer.
6. Except for eligible retired law enforcement employees, part-time employees may not carry a handgun on institution property, even if they have carry permits.
7. The institution's designated law enforcement agency may develop and implement a course or courses to be offered to employees electing to carry a handgun under T.C.A. § 39-17-1309(e)(11). Firearm safety shall be a component of any such course offered. Institutions are not required to offer such courses. Employees are not required to participate in such courses if they are offered.
8. Employees who elect to carry a handgun under T.C.A. § 39-17-1309(e)(11) are not permitted to carry a handgun at the following times and at the following locations:
 - a. Stadiums, gymnasiums, and auditoriums when school-sponsored events are in progress, such as ball games; pep rallies; convocations; graduations; concerts,

plays and other entertainment; etc.
This includes such events that are sponsored by recognized student organizations.

- b. Formal meetings regarding employee or student disciplinary matters.
- c. Formal meetings regarding tenure issues.
- d. A hospital, or an office where medical or mental health services are the primary services provided, such as a clinic, student health center or a mental health counseling center.
- e. Any location where a provision of state or federal law prohibits the carrying of a handgun on that property, including, but not limited to:
 - (1) On the premises of a child care agency, in any vehicle used by a child care agency to transport children, or in the presence of a child being cared for by a child care agency, such as a campus day care center. (Source: Rules of the Tennessee

Department of Human Services, Chapter 1240-04-03, Licensure Rules for Child Care Centers);

- (2) In or on any public K-12 school building, bus, school campus, grounds, recreation area, athletic field or any other property owned, operated, or while in use by any K-12 board of education, school, or directors for the administration of any public or private K-12 educational institution. This includes buildings or parts of buildings that are dedicated to use by a campus K-12 school, middle college, etc.

(Source: T.C.A. § 39-17-1309);

- (3) In or on any building, bus, campus, grounds, recreation area, athletic field or any other property owned, operated, or while in use by a private institution

of higher education that prohibits possession of firearms on its property. For example, if a TBR institution operates in a facility shared with a private institution of higher education that prohibits firearms on its property, a TBR employee will not be able to carry a handgun into the portion of the facility controlled by the private institution.

(Source: T.C.A. § 39-17-1309);

- (4) A public park, playground, civic center or other building facility, area or property which, at the time of the employee's possession of a handgun, the employee knows or should know is being used by board of education, school, college or university board of trustees, regents, or directors for

the administration of
any public or private
educational institution
for the purpose of
conducting an athletic
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athletic field, permanent
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tennis court, basketball
court, track, running
trail, Frisbee field, or
similar multi-use field
(Source: T.C.A. § 39-17-
1311); and

(5) A federal facility.
(Source: 18 United
States Code § 1930).

f. Property leased to the institution, if
the lessor has prohibited the
possession of firearms on the
premises.

9. The employee shall not possess a handgun:

- a. While under the influence of alcohol
or any controlled substance or
controlled substance analogue
(Source: T.C.A. § 39-17-1321); or
- b. While consuming liquor, wine, beer,
or other alcoholic beverage within

the confines of an establishment open to the public where liquor, wine, beer, or other alcoholic beverages are served for consumption on the premises.

(Source: T.C.A. § 39-17-1321)

10. Employees who elect to carry a handgun under T.C.A. § 39-17-1309(e)(11) shall not disclose the fact that they are carrying a handgun with the intent to intimidate or threaten other employees, students or third parties.

- B. When on the premises of the TBR institution where they are employed, employees who are registered to carry a handgun on the premises under T.C.A. § 39-17-1309(e)(11) and this policy must have the handgun either:

1. On or about their person, which means that the gun must be carried concealed on the person or it must be carried concealed in a handbag, briefcase or other carrying case that remains within an arm's reach of the person at all times; or
2. Secured in their personal motor vehicle in accordance with Section III.A of this policy and T.C.A. § 39-17-1313.

IX. [Other Exceptions to the Prohibition on Weapons](#)

- A. Any adult with an enhanced handgun carry permit, concealed handgun carry permit, or who lawfully carries a handgun pursuant to T.C.A. § 39-17-1307(g) may, unless expressly prohibited by federal law, transport and store a

firearm or firearm ammunition in the person's motor vehicle while on or utilizing a parking area if:

1. The person's motor vehicle is parked in a location where it is permitted to be, and
 2. The firearm or ammunition being transported or stored in the motor vehicle:
 - a. Is kept from ordinary observation if the person is in the motor vehicle; or
 - b. Is kept from ordinary observation and locked within the trunk, glove box, or interior of the motor vehicle or a container securely affixed to such motor vehicle if the person is not in the motor vehicle.
 3. A person transporting, storing or both transporting and storing a firearm or firearm ammunition in accordance with this policy does not violate this policy or the law if the firearm or firearm ammunition is observed by another person or security device during the ordinary course of securing the firearm or firearm ammunition from observation in or on a motor vehicle.
- B. A person may possess or carry a firearm or other weapon used solely for instructional or school-sanctioned ceremonial purposes on institution property.
- C. Persons employed in the Army, Air Force, Navy, Coast Guard or Marine service of the United States or any member of the Tennessee National Guard, when in the discharge of their official duties and acting under orders

requiring them to carry arms or weapons, may possess the weapons required by the orders.

- D. Civil officers of the United States in the discharge of their official duties may possess required weapons.
- E. Officers and soldiers of the militia and the National Guard, when called into actual service, may possess required weapons.
- F. POST-certified, active-duty law enforcement officers, whether on or off duty, may possess and carry their service firearm on institution property.

X. **Right to Search for Weapons**

- A. Any TBR institution has the right to search for illegally possessed weapons in any area on the institution's premises, including, but not limited to, lockers, furniture, containers, drawers, equipment or other facilities, lunch boxes, brief cases, personal bags, personal toolboxes or tool kits, parking lots, TBR vehicles and other vehicles parked on the institution's premises.

- 1. **Such searches may only be conducted by law enforcement officers.**

XI. **Violations and Sanctions**

- A. Violation of this policy and/or the applicable laws regarding possession of firearms or other weapons on TBR institution property may result in disciplinary action, up to and including immediate termination of employment or expulsion from the institution. Violation of applicable laws may also result in referral to a law enforcement agency, arrest, and/or prosecution. An institution's response to a violation of this policy and/or applicable law will be based on the totality of the circumstances, including, but not limited to, any threat posed by such violation; whether the



violation was intentional or inadvertent; and any history of non-compliance with this policy.

- B. No TBR institution shall take any adverse employment or disciplinary action against an employee or student based solely on the fact that the person has carried a handgun on TBR institution property in compliance with T.C.A. § 39-17-1309(e)(11) and this policy or stored a firearm or firearm ammunition in a motor vehicle on institution property in compliance with T.C.A. § 39-17-1313. T.C.A. § 49-7-163.

XII. [Limitations of Liability](#)

- A. Unless carrying a handgun is a requirement of the employee's job description, the carrying of a handgun as allowed by T.C.A. § 39-17-1309(e)(11) is a personal choice of the employee and not a requirement of the employing institution. Consequently, an employee is not:
 - 1. Acting in the course of or scope of their employment when carrying or using the handgun;
 - 2. Entitled to workers' compensation benefits under T.C.A. § 9-8-307(a)(1)(K) for injuries arising from the carrying or use of a handgun; or
 - 3. Immune from personal liability with respect to use or carrying of a handgun under T.C.A. § 9-8-307(h).
- B. A TBR institution is absolutely immune from claims for monetary damages arising solely from or related to an employee's use of, or failure to use, a handgun by an employee of that institution who has elected to carry a handgun under T.C.A. § 39-17-1309(e)(11).

Exhibits

-  [Exhibit 1 - Guide to Gun Laws on Campus](#)(pdf /75.89 KB)
-  [Exhibit 2 - Handgun Notification Form & Summary](#)(pdf /146.28 KB)

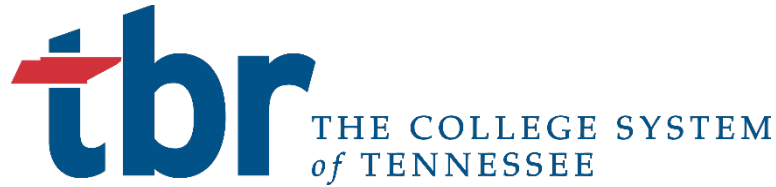
Sources

Authority

T.C.A. § 49-8-203; All State and Federal Statutes, Acts, Codes, Rules and Regulations referenced in this policy; Tennessee Department of Human Services Rule, Chapter 1240-04-03.

History

NEW Policy Adoption; TBR Board Meeting, June 23, 2016, effective July 1, 2016. Revision approved by Board September 15, 2016; October 29, 2020 Updated Exhibit 1; Revision approved by Board June 18, 2021 effective July 1, 2021; Revision approved by Board September 23, 2022; Revision approved by Board June __, 2023 effective July 1, 2023.



**Presidents Quarterly Meeting
May 3, 2023**

SUBJECT: TBR Policy 6.04.00.00, Pregnancy, Childbirth, and Related Conditions (Employees) (New Policy)

PRESENTER: Brian Lapps

ACTION REQUIRED: Requires Vote

Summary:

This new, proposed policy is designed to implement two amended federal statutes. The Pregnant Workers Fairness Act amends Title VII of the Civil Rights Act of 1964 and requires that institutions provide reasonable accommodations for pregnancy, childbirth, and medical conditions related to pregnancy and/or childbirth. The reasonable accommodation requirements and process are similar to the Americans with Disability Act accommodation process, but with a few notable exceptions as explained in policy.

The Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), amends the Fair Labor Standards Act. This law requires that nursing mothers be given time and a place to express breast milk.

The U.S. Department of Education's June 2022 Notice of Proposed Rulemaking (NPRM) contains many similar protections for students, but with some important differences. The Department, which has been evaluating comments to the NPRM, is expected to issue a final rule in the near future, at which time the System Office will likely be proposing a new policy to comply with the regulations.

PREGNANCY, CHILDBIRTH, AND RELATED MEDICAL CONDITIONS (EMPLOYEES): 6.04.00.00

Policy/Guideline Area

Sexual Discrimination/Harassment/Misconduct

Applicable Divisions

TCATs, Community Colleges, System Office

Purpose

The Tennessee Board of Regents prohibits discrimination against employees because of sex and requires institutions to comply with all legal obligations regarding pregnancy, childbirth, and related medical conditions in accordance with Title VII of the Civil Rights Act of 1964, the Pregnant Workers Fairness Act, Title IX of the Education Amendments of 1972, the PUMP Act, Tennessee Code Annotated § 50-1-305, and all other applicable state and federal statutes and regulations.

Definitions

- “Institution” means each college within the TBR System, and includes the TBR System Office.
- “Known limitation” means a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth or related medical conditions that the employee or the employee’s representative has communicated to the institution, whether or not such condition constitutes a disability under the Americans with Disabilities Act.
- “Qualified employee” means an employee or applicant who, either with or without reasonable accommodation, can perform the essential functions of the job position. An employee or applicant is considered qualified if any inability to perform an essential function is for a temporary period, the essential function can be performed in the near future, and the inability to perform the essential function can be reasonably accommodated.
 - This policy applies to all qualified employees of the institution, whether full- or part-time; whether faculty, adjunct, or staff; and regardless of length of employment.
 - A qualified applicant is considered to be a qualified employee.
- “Reasonable accommodation” generally has the same meaning as under the ADA.
 - Reasonable accommodation means a modification or adjustment to a job or the work environment that will enable a qualified employee to perform the essential functions of the job. (Unlike the ADA, reasonable accommodation under this policy may include temporarily relieving a qualified employee of an essential function of the job.) If multiple reasonable accommodations are available, the institution may select among reasonable accommodations.
 - Reasonable accommodation may include, but is not limited to, making existing facilities accessible, leave, job restructuring, a part-time or modified work schedule, acquiring or modifying equipment, changing or making exceptions to a policy, and reassignment to a vacant position.

- “Related medical condition” includes any illness, complication, or symptoms arising out of pregnancy or childbirth. Examples of related medical conditions include, but are not limited to, morning sickness, gestational diabetes, pregnancy-induced hypertension, miscarriage, sciatica, lactation or the need to express breast milk, medical procedures and recovery, physical injuries from childbirth, and postpartum depression.

Policy/Guideline

- I. Nondiscrimination in General
 - A. Discrimination or harassment based on pregnancy or related medical condition is prohibited gender discrimination. Complaints of discrimination or harassment based on pregnancy should be submitted to the Title IX Coordinator and will be investigated pursuant to TBR P-080 or TBR Policy 6.01.00.00, Sex Discrimination, Sexual Harassment, or Sexual Misconduct.
 - B. Retaliation against someone who requests a reasonable accommodation for pregnancy, childbirth, or a related medical condition or who files a complaint based on pregnancy is prohibited. Retaliation complaints will be investigated under P-080 or TBR 6.01.00.00.
 - C. An institution shall treat employees who are temporarily unable to perform their job duties or participate in educational programs due to pregnancy, childbirth, or related medical conditions the same as non-pregnant employees who are similar in their ability or inability to work or participate in educational activities, for example with respect to temporary and light duty assignments.
- II. Reasonable Accommodation on the Basis of Pregnancy, Childbirth, and Related Medical Conditions
 - A. An employee or applicant who seeks a reasonable accommodation should contact the institution’s Title IX Coordinator or other individual designated by the institution. Employees are required to participate in an interactive process to determine a reasonable accommodation.
 - B. An employee who learns that another employee may need reasonable accommodation under this policy should report the matter to the Title IX Coordinator or other individual designated by the institution.
 - C. An institution shall make reasonable accommodation to known limitations related to pregnancy, childbirth, or related medical condition of a qualified employee. The institution and employee must engage in a good faith, interactive process to identify a reasonable accommodation.
 - D. An institution may deny a reasonable accommodation if it would result in undue hardship to the institution. The Office of General Counsel must be consulted prior to denying a reasonable accommodation based on undue hardship.
 - E. An institution shall not:
 1. require a qualified employee to accept a reasonable accommodation other than one arrived at through an interactive process;
 2. deny equal employment opportunities to a qualified employee based on the need to make reasonable accommodations; or
 3. take adverse action against a qualified employee because the employee requested or used a reasonable accommodation, or otherwise retaliate against an individual in violation of applicable law.

- F. A qualified employee may elect to take leave in accordance with TBR Policy 5.01.01.08, Parental Leave or TBR Policy 5.01.01.14, Family, Medical, and Service Member Leave. An institution shall not require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided.
- G. Reasonable accommodation pursuant to this policy is available only to qualified employees who are pregnant, have given birth, or have a pregnancy-related condition. Leave for family members may be available pursuant to TBR Policy 5.01.01.08, Parental Leave or TBR Policy 5.01.01.14, Family, Medical, and Service Member Leave.

III. Lactation

- A. An institution shall provide space other than a restroom to express milk. The institution may either create dedicated space or provide temporary space on an as-needed basis. The space must be clean, shielded from view, and free from intrusion from others.
- B. Institutions must provide a reasonable amount of break time, as frequently as needed by the nursing mother, to express milk. Breaks must be provided for one year following birth, and any employee who wishes to continue expressing breast milk beyond one year should contact the Title IX Coordinator to discuss additional time to provide breaks.
- C. Employees taking breaks to express milk shall be compensated in the same manner as other employees are compensated during break time. No deduction may be made from an exempt employee's salary. No deduction from a non-exempt employee's pay is permitted unless the Title IX Coordinator has approved in advance.

Sources

Tenn. Code Ann. § 50-1-305

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (as amended by the Pregnant Workers Fairness Act)

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688

Fair Labor Standards Act § 18d (as amended by the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act))

Related Policies

[Parental Leave : 5.01.01.08 | policies.tbr.edu](#)

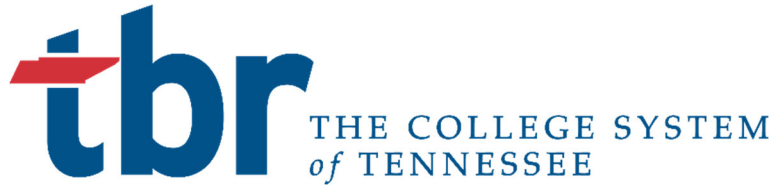
[Family, Medical, and Service Member Leave : 5.01.01.14 | policies.tbr.edu](#)

[Sex Discrimination, Sexual Harassment or Sexual Misconduct : 6.01.00.00 | policies.tbr.edu](#)

[Sex Discrimination and Sexual Harassment : 6.02.00.00 | policies.tbr.edu](#)

[Sexual Misconduct : 6.03.00.00 | policies.tbr.edu](#)

[Discrimination & Harassment - Complaint & Investigation Procedure : P-080 | policies.tbr.edu](#)



Presidents Quarterly Meeting
May 3, 2023

SUBJECT: TBR Policy 5.01.01.07, Parental Leave (Revisions)

PRESENTER: Brian Lapps

ACTION REQUIRED: Requires Vote

Summary:

Effective July 1, 2023, State of Tennessee employees will be able to take six weeks of paid parental leave for the birth of child or placement of a child for adoption. (After expiration of six weeks paid leave, employees may use a combination of sick, annual, and unpaid leave for a total of four months parental leave.) This new paid parental leave is in addition to sick and annual leave. Proposed revisions to the Parental Leave policy implement such paid leave at TBR.

Parental Leave : 5.01.01.08

Policy Area

Personnel Policies

Applicable Divisions

TCATs, Community Colleges, System Office

Purpose

It is the policy of the Tennessee Board of Regents to provide a period of up to four (4) months of ~~unpaid~~ parental leave to eligible employees for adoption, pregnancy, childbirth and nursing the infant, where applicable, in accordance with T.C.A. § 4-21-408. With regard to adoption, the four (4) month period shall begin at the time the employee receives custody of the child. For eligible employees, six (6) weeks of parental leave will be paid, beginning with the birth of the child or placement of a child for adoption.

Policy

I. Eligibility

- A. Employees who have been employed by the State for at least twelve (12) consecutive months as full-time employees, as determined by the employer at the job site or location, are eligible for this leave.
- B. Subsequent references within policy to an employee shall assume eligibility of that individual.

II. Relevant Policies

- A. Upon receipt of a written request for parental leave, the President/Chancellor or designee will process the request in accordance with the provisions of this policy and the employee's eligibility for leave under TBR Policy 5.01.01.14 Family and Medical Leave. Reference may also need to be made to TBR Policies 5.01.01.07 Sick Leave, 5.01.01.03 Leave of Absence and 5.01.01.01 Annual Leave.

III. Notice; Employment Rights and Benefits; Reinstatement

- A. Employees who give at least three (3) months advance notice to their employer of their anticipated date of departure for such leave, their length of leave, and their intention to return to full-time employment after leave, shall be restored to their previous or similar

positions with the same status, pay, length of service credit and seniority, wherever applicable, as of the date of their leave.

- B. Employees who are prevented from giving three (3) months advance notice because of a medical emergency which necessitates that leave begins earlier than originally anticipated shall not forfeit their rights and benefits under this policy solely because of their failure to give three (3) months advance notice.
- C. Employees who are prevented from giving three (3) months advance notice because the notice of adoption was received less than three (3) months in advance shall not forfeit their rights and benefits under this policy solely because of their failure to give three (3) months advance notice.
- D. Leave will be granted as paid or unpaid pursuant to the policies of the Tennessee Board of Regents.
 - 1. Such leave shall not affect the employees' right to receive annual leave, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which the employees were eligible at the date of their leave, and any other benefits or rights of their employment incident to the employees' employment position.
 - 2. However, the employer need not provide for the cost of any benefits, plans or programs during the period of leave unless such employer so provides for all employees on leaves of absence.
- E. If an employee's job position is so unique that the employer cannot, after reasonable efforts, fill that position temporarily, then the employer shall not be liable for failure to reinstate the employee at the end of the parental leave period.
- F. The purpose of this policy is to provide leave time to employees for adoption, pregnancy, childbirth and nursing the infant, where applicable.
 - 1. Therefore, if the employer finds that the employee has utilized the period of leave to actively pursue other employment opportunities or if the employer finds that the employee has worked part time or full time for another employer during the period of

leave, the employer shall not be liable for failure to reinstate the employee at the end of such leave.

- G. Whenever the employer shall determine that the employee will not be reinstated at the end of such leave because the employee's position cannot be filled temporarily or because the employee has used such leave to pursue employment opportunities or to work for another employer, the employer shall so notify the employee.

IV. Paid Parental Leave

- A. An employee eligible for parental leave under this policy shall be granted six (6) workweeks of paid parental leave at full pay following the birth or the placement of a child for adoption. The institution shall not charge paid parental leave to sick, annual, or other leave the employee may have accumulated. The institution shall consider such leave to be full-time employment for purposes of calculating service anniversary dates.
- B. Paid parental leave must be used within twelve (12) months of the birth or placement of a child for adoption.
- C. Paid parental leave shall be continuous, i.e., in a single block of time, unless the institution, in its discretion, permits the employee to use paid parental leave intermittently.
- D. Paid parental leave is part of, and not in addition to, the four (4) months of parental leave provided under this policy. Paid parental leave runs concurrently with FMLA and parental leave.
- E. Paid parental leave is not applicable to placement of foster care children.
- F. In order to receive paid parental leave, the eligible employee must provide thirty (30) days advance notice, unless the employee learns of the birth or adoption less than thirty (30) days in advance, in which case notice must be given as soon as reasonably possible.
- ~~H.~~G. An employee is not eligible for more than six (6) weeks of paid leave during a twelve (12) month period, even if there is more than one birth or adoption.

IV.V. Use of Accrued Sick and Annual Leave and Compensatory Time

- A. ~~In addition to receiving six (6) weeks of paid parental leave, an eligible employee may use up to thirty (360) working days of accrued sick leave or six (6) weeks working days~~ following the birth of a child or placement for adoption, unless medical complications arise that fit ordinary rules regarding the use of sick leave.
- B. In the event both parents are state employees, the aggregate amount of sick leave that may be used for adoption is limited to sixty (60) working days total for both parents following the placement for adoption. In the event of childbirth, each parent may take up to sixty (60) working days when both parents are state employees.
- C. In order to be eligible to use sick leave as parental leave, a statement from the attending physician indicating the expected date of delivery must accompany the request for leave.
 - 1. Additional information from the attending physician may be required if there are complications and the period of absence must begin sooner than agreed, extend further than agreed, or require the use of sick leave beyond the period beginning with the period of hospitalization and extending for sixty (60) work days following the birth of a child or placement for adoption.
- ~~D.~~ After the sixty (60) working days following the birth of a child or placement for adoption or, if extended, after employee's physician determines that the employee should be released, thus ending the period of sick leave, the employee may use accrued annual leave or leave without pay for the remainder of the four-month parental leave.

E.D. Annual Leave; Compensatory Time

- ~~F.E.~~ Accrued annual leave and compensatory time may be used for the entire leave period following the six (6) weeks of paid leave.

V.VI. Leave of Absence

- A. When accrued annual and sick leave balances are depleted prior to the end of the four (4) month parental leave period, the employee will be placed in a leave of absence status. Refer to TBR Policy 5.01.01.03 Leave of Absence regarding continuation of insurance coverage for employees on unpaid leave of absence.

~~VI.~~VII. Family and Medical Leave

- A. To be eligible for Family and Medical Leave (FML) which provides for up to twelve (12) work weeks of leave, an employee must have:
 - 1. Worked for the State at least 12 months; and,
 - 2. Worked a minimum of 1250 hours during the year preceding the start of the leave.
- B. Employees who are eligible for FML will have parental leave processed in conjunction with the provisions of TBR Policy 5.01.01.14 Family and Medical Leave regarding election of paid/unpaid leave, continuation of insurance coverage, etc. Parental leave and FML periods shall run concurrently.
- C. At the end of the FML period, an employee is also entitled to receive the difference between the four months granted under this policy and the 12 workweeks granted under FML. Accrued annual leave or leave of absence may be used for the remainder of the parental leave period.
- D. During work weeks that an employee takes leave designated as FML, the employer is responsible for paying the employer's portion of the employee's insurance premium, whether the leave is paid or unpaid.
- E. Employees who choose to take any unpaid leave over the amount to which they are entitled under FML should be made aware that they will be responsible for paying the employer's portion of the insurance premium for the remainder of the leave period if they wish to ensure continued coverage.
- F. The above Policy 5.01.01.08 Paternal Leave supersedes 5.01.01.02 Adoptive Parents Leave, 5.01.01.08 Maternity Leave, and 5.01.01.16 Paternity Leave.

Sources

Authority

T.C.A. § 49-8-203; [T.C.A. § 8-50-809](#)

-T.C.A. § 4-21-408

History

TBR Board Mtg. December 2, 2005; June 24, 2010; Revised at TBR Board Mtg September 19 & 20, 2019: [Revised at TBR Board Mtg June 16, 2023 \(effective July 1, 2023\).](#)

Related Policies

- [Family, Medical, and Service Member Leave](#)
- [Sick Leave](#)
- [Leave of Absence](#)
- [Annual Leave](#)

Parental Leave : 5.01.01.08

Policy Area

Personnel Policies

Applicable Divisions

TCATs, Community Colleges, System Office

Purpose

It is the policy of the Tennessee Board of Regents to provide a period of up to four (4) months of parental leave to eligible employees for adoption, pregnancy, childbirth and nursing the infant, where applicable, in accordance with T.C.A. § 4-21-408. With regard to adoption, the four (4) month period shall begin at the time the employee receives custody of the child. For eligible employees, six (6) weeks of parental leave will be paid, beginning with the birth of the child or placement of a child for adoption.

Policy

~~VII.~~VIII. Eligibility

- A. Employees who have been employed by the State for at least twelve (12) consecutive months as full-time employees, as determined by the employer at the job site or location, are eligible for this leave.
- B. Subsequent references within policy to an employee shall assume eligibility of that individual.

~~VIII.~~IX. Relevant Policies

- A. Upon receipt of a written request for parental leave, the President/Chancellor or designee will process the request in accordance with the provisions of this policy and the employee's eligibility for leave under TBR Policy 5.01.01.14 Family and Medical Leave. Reference may also need to be made to TBR Policies 5.01.01.07 Sick Leave, 5.01.01.03 Leave of Absence and 5.01.01.01 Annual Leave.

~~IX.~~X. Notice; Employment Rights and Benefits; Reinstatement

- A. Employees who give at least three (3) months advance notice to their employer of their anticipated date of departure for such leave, their length of leave, and their intention to

return to full-time employment after leave, shall be restored to their previous or similar positions with the same status, pay, length of service credit and seniority, wherever applicable, as of the date of their leave.

- B. Employees who are prevented from giving three (3) months advance notice because of a medical emergency which necessitates that leave begins earlier than originally anticipated shall not forfeit their rights and benefits under this policy solely because of their failure to give three (3) months advance notice.
- C. Employees who are prevented from giving three (3) months advance notice because the notice of adoption was received less than three (3) months in advance shall not forfeit their rights and benefits under this policy solely because of their failure to give three (3) months advance notice.
- D. Leave will be granted as paid or unpaid pursuant to the policies of the Tennessee Board of Regents.
 - 1. Such leave shall not affect the employees' right to receive annual leave, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which the employees were eligible at the date of their leave, and any other benefits or rights of their employment incident to the employees' employment position.
 - 2. However, the employer need not provide for the cost of any benefits, plans or programs during the period of leave unless such employer so provides for all employees on leaves of absence.
- E. If an employee's job position is so unique that the employer cannot, after reasonable efforts, fill that position temporarily, then the employer shall not be liable for failure to reinstate the employee at the end of the parental leave period.
- F. The purpose of this policy is to provide leave time to employees for adoption, pregnancy, childbirth and nursing the infant, where applicable.
 - 1. Therefore, if the employer finds that the employee has utilized the period of leave to actively pursue other employment opportunities or if the employer finds that the

employee has worked part time or full time for another employer during the period of leave, the employer shall not be liable for failure to reinstate the employee at the end of such leave.

- G. Whenever the employer shall determine that the employee will not be reinstated at the end of such leave because the employee's position cannot be filled temporarily or because the employee has used such leave to pursue employment opportunities or to work for another employer, the employer shall so notify the employee.

X.XI. Paid Parental Leave

- A. An employee eligible for parental leave under this policy shall be granted six (6) workweeks of paid parental leave at full pay following the birth or the placement of a child for adoption. The institution shall not charge paid parental leave to sick, annual, or other leave the employee may have accumulated. The institution shall consider such leave to be full-time employment for purposes of calculating service anniversary dates.
- B. Paid parental leave must be used within twelve (12) months of the birth or placement of a child for adoption.
- C. Paid parental leave shall be continuous, i.e., in a single block of time, unless the institution, in its discretion, permits the employee to use paid parental leave intermittently.
- D. Paid parental leave is part of, and not in addition to, the four (4) months of parental leave provided under this policy. Paid parental leave runs concurrently with FMLA and parental leave.
- E. Paid parental leave is not applicable to placement of foster care children.
- F. In order to receive paid parental leave, the eligible employee must provide thirty (30) days advance notice, unless the employee learns of the birth or adoption less than thirty (30) days in advance, in which case notice must be given as soon as reasonably possible.

- G. An employee is not eligible for more than six (6) weeks of paid leave during a twelve (12) month period, even if there is more than one birth or adoption.

~~XI.~~XII. **Use of Accrued Sick and Annual Leave** and Compensatory Time

- A. In addition to receiving six (6) weeks of paid parental leave, an eligible employee may use up to thirty (30) days of accrued sick leave following the birth of a child or placement for adoption, unless medical complications arise that fit ordinary rules regarding the use of sick leave.
- B. In the event both parents are state employees, the aggregate amount of sick leave that may be used for adoption is limited to sixty (60) working days total for both parents following the placement for adoption. In the event of childbirth, each parent may take up to sixty (60) working days when both parents are state employees.
- C. In order to be eligible to use sick leave as parental leave, a statement from the attending physician indicating the expected date of delivery must accompany the request for leave.
1. Additional information from the attending physician may be required if there are complications and the period of absence must begin sooner than agreed, extend further than agreed, or require the use of sick leave beyond the period beginning with the period of hospitalization and extending for sixty (60) work days following the birth of a child or placement for adoption.
- D. After the sixty (60) working days following the birth of a child or placement for adoption or, if extended, after employee's physician determines that the employee should be released, thus ending the period of sick leave, the employee may use accrued annual leave or leave without pay for the remainder of the four-month parental leave.
- E. Accrued annual leave and compensatory time may be used for the entire leave period following the six (6) weeks of paid leave.

~~XII.~~XIII. **Leave of Absence**

- A. When accrued annual and sick leave balances are depleted prior to the end of the four (4) month parental leave period, the employee will be placed in a leave of absence

status. Refer to TBR Policy 5.01.01.03 Leave of Absence regarding continuation of insurance coverage for employees on unpaid leave of absence.

~~XIII.~~XIV. Family and Medical Leave

- A. To be eligible for Family and Medical Leave (FML) which provides for up to twelve (12) work weeks of leave, an employee must have:
 - 1. Worked for the State at least 12 months; and,
 - 2. Worked a minimum of 1250 hours during the year preceding the start of the leave.
- B. Employees who are eligible for FML will have parental leave processed in conjunction with the provisions of TBR Policy 5.01.01.14 Family and Medical Leave regarding election of paid/unpaid leave, continuation of insurance coverage, etc. Parental leave and FML periods shall run concurrently.
- C. At the end of the FML period, an employee is also entitled to receive the difference between the four months granted under this policy and the 12 workweeks granted under FML. Accrued annual leave or leave of absence may be used for the remainder of the parental leave period.
- D. During work weeks that an employee takes leave designated as FML, the employer is responsible for paying the employer's portion of the employee's insurance premium, whether the leave is paid or unpaid.
- E. Employees who choose to take any unpaid leave over the amount to which they are entitled under FML should be made aware that they will be responsible for paying the employer's portion of the insurance premium for the remainder of the leave period if they wish to ensure continued coverage.
- F. The above Policy 5.01.01.08 Paternal Leave supersedes 5.01.01.02 Adoptive Parents Leave, 5.01.01.08 Maternity Leave, and 5.01.01.16 Paternity Leave.

Sources

Authority

T.C.A. § 49-8-203; T.C.A. § 8-50-809

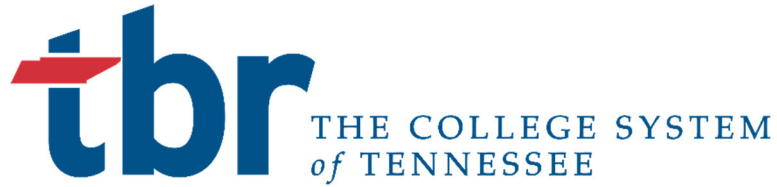
T.C.A. § 4-21-408

History

TBR Board Mtg. December 2, 2005; June 24, 2010; Revised at TBR Board Mtg September 19 & 20, 2019; Revised at TBR Board Mtg June 16, 2023 (effective July 1, 2023).

Related Policies

- [Family, Medical, and Service Member Leave](#)
- [Sick Leave](#)
- [Leave of Absence](#)
- [Annual Leave](#)



Presidents Quarterly Meeting
May 3, 2023

SUBJECT: Revision to TBR Policy 5.01.01.14, Family, Medical, and Service Member Leave

PRESENTER: Brian Lapps

ACTION REQUIRED: Requires Vote

Summary:

The proposed revisions consist of a new section (II.A.2.c.) explaining that six weeks of paid parental leave is available upon the birth or placement of a child and that the details may be found in TBR Policy 5.01.01.07, Parental Leave. The revisions to the FML policy follow the new state law providing state employees with six weeks of paid parental leave and TBR's implementation process.

Family, Medical, and Service Member Leave:

5.01.01.14

Policy Area

Personnel Policies

Applicable Divisions

TCATs, Community Colleges, System Office

Purpose

In compliance with the Family and Medical Leave Act of 1993, as amended, ("FMLA" or "the Act") it is the policy of the Tennessee Board of Regents ("TBR") to provide eligible employees up to 12 workweeks of leave during a 12-month period for family or medical leave, or for a qualifying exigency; or, up to 26 workweeks of leave for military caregiver leave during a 12-month period for reasons specified in this Policy, 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.

Definitions

- State - shall be defined as any State agency, the TBR System, and/or the University of Tennessee System, for purposes of this policy.
- Other definitions are part of the policy text.

Policy

I. Employee Eligibility

- A. In order to be considered "eligible," 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) the employee has as of the date the leave actually begins.
- C. This policy applies to both regular and temporary employees.
- 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).
- F. The 12 months of required work with the State do not have to be consecutive in order for an employee to be eligible. However, employment prior to a break in service lasting 7 or more years will not be counted unless the break was due to fulfillment of a National Guard or Reserve military service obligation. The time served performing the military service must also be counted in determining whether the employee has been employed for at least 12 months by the employer.
- G. 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.
- H. In determining "hours worked" for the purposes of FMLA eligibility, all hours actually worked by an employee (including overtime hours) should be calculated.
 - 1. 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.
 - 2. In situations where a full-time 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 they have worked for the State for at least 12 months.
 - 3. For purposes of this policy, full-time faculty satisfy the 1,250 hour test.
- I. The determination of eligibility must be made as of the date the leave commences or within 5 business days (absent extenuating circumstances) of when notification of an FMLA qualifying event has been received.
 - 1. If an employee gives notice that leave is required before meeting the eligibility criteria, they must either be:
 - a. Provided with confirmation of when eligibility will be attained, based upon a projection; or

- b. Advised when the criteria have been met.
- 2. In the latter case, the notice of leave will remain current and outstanding until the employee is advised that eligibility has been attained.
- 3. Eligibility that is confirmed at the time the notice is received may not be subsequently challenged.
- 4. 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.
- 5. In addition, if notice of the need for leave has not been given more than 5 business days prior to commencement of the leave, a determination of eligibility must be confirmed within 5 business days following notice.
- 6. If such a determination is not provided, the employee will be considered eligible.
- J. Leave requests for regular employees who do not satisfy the FMLA eligibility requirements shall be processed in accordance with the appropriate TBR leave policies.

II. [Leave Entitlement - FMLA Qualifying Events](#)

A. Family Leave

- 1. The birth of a son/daughter and to care for the newborn child.
 - a. 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. Husbands may also use FMLA to accompany an expectant spouse to prenatal visits, to care for an expectant spouse with a serious health condition, or if needed to care for the spouse following the birth of the child if the spouse has a serious health condition.
- 2. The adoptive or foster care placement of a son or daughter with the employee.
 - a. 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.

b. 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, A.3., for age limitations for son/daughter.)

b.c. **Paid Parental Leave:** Eligible employees will receive six (6) weeks of paid parental leave in accordance with TBR Policy 5.01.01.08, Parental Leave. FMLA leave shall run concurrently with parental leave, whether paid or unpaid.

e.d. 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.

3. To care for the employee's spouse, son, daughter, or parent with a serious health condition, as defined below:
 - a. Spouse: For purposes of this policy is defined by the U.S. Department of Labor - Family Medical Leave Act. (Code of Federal Regulations; 29 CFR 825.102 Definitions)
 - b. 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.
 - c. 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 Amendments Act of 2008 (ADAAA), 42 U.S.C. 12101 et seq., define these terms.

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

B. Medical Leave. The employee has a serious health condition resulting in an inability to perform job functions.

1. An employee is unable to perform the functions of their position if the Health Care Provider ("HCP") finds that the employee is:
 - a. Unable to work at all; or
 - b. Unable to perform any one of the position's essential functions within the meaning of the ADAAA, 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.
2. 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 HCP to review when requiring certification.

C. Service member [or Military Family] Leave

1. “Qualifying Exigency.” Employees with a spouse, son, daughter, or parent (“the Servicemember”) on covered active duty or a Federal call to covered active duty in the regular Armed Forces, the National Guard or Reserves, or a retired member of the regular Armed Forces or Reserves may use leave to address exigencies listed below arising out of the covered active duty or impending covered active duty deployment of the Service member to a foreign country:
 - a. Short-notice deployment (up to 7 days of leave);
 - b. Attending certain military events;
 - c. Child care or school activities;
 - d. Addressing financial and legal arrangements;
 - e. Periods of rest and recuperation with the Service member (up to 5 days of leave)
 - f. Attending counseling sessions related to active duty;
 - g. Attending post-deployment activities (available for up to 90 days after the termination of the covered Servicemember’s active duty status);
 - h. Other activities arising out of the Service member’s active duty or call to active duty, and agreed upon by the institution and employee.
2. Military Caregiver Leave
 - a. 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 the covered Service member who has a serious injury or illness incurred in the line of duty while on covered active duty in the Regular Armed Forces, National Guard or Reserves provided that such injury or illness may render the Service member medically unfit to perform duties for which the Service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.
 1. A serious health condition also includes any injury or illness that existed before the beginning of the Servicemember’s covered active duty that was aggravated by service in the line of duty on covered active duty.

2. A veteran of the regular Armed Forces, National Guard or Reserves will be considered a covered Service member for purposes of this leave entitlement if:
 1. They are undergoing medical treatment, recuperation or therapy for a serious injury or illness that was incurred by or aggravated while on covered active duty in the Armed Forces, whether or not the illness or injury manifested itself before or after the member became a veteran; and
 2. They were a member of the Armed Forces, National Guard, or Reserves at any time during the five-year period before beginning the treatment, recuperation or therapy.
- b. An employee may take up to 26 workweeks of leave on a per Service member, per injury/illness basis during a 12-month period, beginning on the first day of leave. However, no more than 26 workweeks of leave may be taken within any single 12-month period.
- c. "Next of kin" means the nearest blood relative other than the covered Servicemember's spouse, parent or child designated by the Service member in the following order of priority:
 1. A legal guardian or custodian; or
 2. A sibling, grandparent, aunt/uncle, or first cousin, unless the Service member has specifically designated in writing another blood relative as his/her nearest blood relative.

III. FMLA definition of "a serious health condition" and "period of incapacity"

- A. "Serious health condition" means an illness, injury, impairment, or physical or mental condition involving any of the following:
 1. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity; or
 2. Continuing treatment by a HCP which includes:

- a. A period of incapacity lasting more than 3 consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
 - 1. Treatment 2 or more times by or under the supervision of a HCP (i.e., in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); or
 - 2. Treatment on at least one occasion by a HCP (i.e., an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment. (e.g., prescription medication, physical therapy)
 - b. Any period of incapacity related to pregnancy or for prenatal care. A visit to the HCP is not necessary for each absence; or
 - c. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a HCP, and may involve episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). A visit to a HCP is not necessary for each absence; or
 - d. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, severe stroke, or terminal stages of a disease). Only supervision by a HCP is required, rather than active treatment; or
 - e. Any absences to receive multiple treatments, including any period of recovery therefrom, 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 3 days if not treated.
- B. "Period of incapacity" means an inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment or recovery.

- C. Absences due to pregnancy or prenatal care, or chronic conditions as specified above, fall within FMLA even if no treatment from a HCP is received, and even if the absence does not last more than 3 consecutive, full calendar days.

IV. **Determination of the 12 Workweek/26 Workweek Periods**

A. Limitations on Length and Duration

1. Eligible employees are entitled to up to a total of 12 workweeks of leave for family or medical leave, and for a qualifying exigency under Service member leave; and, up to 26 workweeks of leave to care for a Service member with an injury or illness during a 12-month period.
 - a. The initial 12-month period starts on the date the employee's FMLA leave first begins.
 - b. A new 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period.
 1. For example, an employee who first uses FMLA leave on October 7, 2008, would have their 12-month period begin on that date and continue through October 6, 2009.
 2. If this employee subsequently needed to use FMLA leave starting on December 2, 2009, a new 12-month period would be established from that date forward through December 1, 2010.
2. A holiday that occurs within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave.
 - a. Exception: If the institution/System Office is temporarily closed for work for 1 or more weeks (e.g., closing for the Christmas/New Year holiday, summer breaks), those days do not count as FMLA leave.
 - b. If the employee takes intermittent leave, the holiday is not counted unless the employee would have been scheduled to work the holiday.

3. Overtime hours. If the employee is normally scheduled to work overtime but is unable to do so because of a serious health condition, the overtime missed may be counted as FMLA leave.
 - a. For example, if an employee would normally be required to work 48 hours in a particular week, but due to a serious health condition the employee is unable to work more than 40 hours that week, the employee would utilize 8 hours of FMLA protected leave.
 - b. Voluntary overtime hours that an employee does not work due to a serious health condition may not be counted against the employee's FMLA leave entitlement.
 4. Part-time employees receive FMLA leave on a pro rata or proportional basis.
 5. If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 workweeks prior to the beginning of the leave period would be used for calculating the employee's normal workweek.
- B. Leave entitlement for the birth of a child or for adoption or foster care placement of a child expires at the end of the 12-month period beginning on the date of the birth or placement. FMLA leave for these reasons must be concluded within this time period.
- C. Leave to care for an injured or ill Service member is to be applied on a per-covered Service member, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered Servicemember's or to care for the same Service member with a subsequent serious injury or illness. However, no more than 26 workweeks of leave may be taken within any single 12-month period.
- D. 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 12 workweeks of FMLA leave during a 12-month period if the leave is taken for the following reasons:
 - a. Birth of a child or for care of the child after birth; or

- b. Adoptive or foster care placement of a son or a daughter or for care of the child after placement; or
 - c. To care for a parent with a serious health condition.
 - d. However, each employee would be entitled to take 12 workweeks of FMLA leave to care for a child, including a newborn, 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 each has taken individually and 12 workweeks of FMLA leave for reasons other than those listed.
 - a. For example, if both spouses use 6 workweeks of leave for the birth of a child, each could take an additional 6 workweeks of leave for personal illness, or to care for a family member with a serious health condition.
 - b. In situations where FMLA leave is not taken due to birth, adoption, or foster care, or to care for a parent during a given year, each spouse is entitled to full 12 workweeks of leave.
 - c. Additionally, each employee would be entitled to take 12 workweeks of FMLA leave to care for a newborn child or child if that child has a serious health condition.
 - 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 Leave. The aggregate number of workweeks of leave to which both that husband and wife may be entitled is limited to 26 workweeks during a 12-month period.
- E. Use of an intermittent or reduced leave schedule.
- 1. "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.

2. An employee may take intermittent FMLA leave or have a reduced leave schedule over a 12-month time period when medically necessary for:
 - a. Planned and/or unanticipated medical treatment of a serious health condition by or under the supervision of a HCP;
 - b. Recovery from the condition;
 - c. Recovery from treatment of the condition; or
 - d. To provide care to an immediate family member with a serious health condition.
 1. 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.
3. 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 HCP.
4. If an employee requests intermittent leave or leave resulting in a reduced work schedule, the employer 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.
 - a. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave.
 - b. This temporary position must have equivalent pay and benefits, but need not have equivalent duties.
 - c. For information regarding benefits (e.g., insurance and longevity) not ordinarily provided to part-time employees that may not be eliminated, see Section XVIII.
 - d. 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).

- e. When an employee who transferred to an alternative position is able to return to full-time work, they shall be placed in the same or equivalent position as the job held when the leave commenced.
 - f. An employee cannot be required to take more FMLA leave than the circumstance for the leave requires.
5. The employer must account for intermittent or reduced leave using an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave provided that it is not greater than one hour and provided further that an employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken.

V. Employee Notice Requirements

A. General.

- 1. An employee giving notice of the need for FMLA leave does not need to expressly assert rights under the Act or even mention the FMLA to meet the obligation to provide notice though the employee would need to state a qualifying reason for the needed leave and otherwise satisfy the notice requirements.
- 2. However, if the employee fails to explain the reasons for the leave, the request may be denied.

B. Foreseeable leave

1. Timing of notice

- a. The employee must provide at least 30 days advance notice before the leave is to begin, or if 30 days is not practicable, as soon thereafter as possible. The employer may require the employee to explain the reasons why notice was not given at least 30 days prior to the leave.
- b. Notice need be given only once but the employee shall advise the employer as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown.

2. Content of notice

- a. An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs FMLA qualifying leave, and the anticipated timing and duration of the leave.
- b. The employer may request medical certification to support the need for the leave to determine if the condition qualifies as a serious health condition. The employer may request certification to support the need for leave for a qualifying exigency or for military caregiver leave.
- c. An employee has an obligation to respond to an employer's questions designed to determine whether an absence is potentially FMLA qualifying. Failure to respond to reasonable employer inquiries may result in denial of FMLA protection if the employer is unable to determine whether the leave is FMLA qualifying.
- d. An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

3. Scheduling leave

- a. The employee must consult with the employer and make a reasonable effort to schedule planned medical treatments so as not to unduly disrupt the employer's operations subject to the approval of the HCP.
- b. Intermittent leave or leave on a reduced schedule must be medically necessary due to a serious health condition, injury or illness. The employee and employer shall attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting the employer's operation, subject to the approval of the health care provider.

C. Unforeseeable Leave

1. Timing of notice

- a. An employee must provide notice as soon as practicable under the facts and circumstances of the case.

- b. Notice may be given by the employee's spokesperson if the employee is unable to do so personally.

2. Content of notice

- a. An employee shall provide sufficient information for an employer to reasonably determine whether the FMLA may apply to the leave request, and the anticipated duration of the absence.
- b. Calling in sick without providing more information will not be considered sufficient notice to trigger an employer's obligations under the FMLA. The employer may obtain any additional required information by contacting the employee or the employee's spokesperson through informal means.
- c. The employee has an obligation to respond to an employer's questions designed to determine whether an absence is potentially FMLA qualifying. Failure to respond to reasonable employer inquiries may result in denial of FMLA protection if the employer is unable to determine whether the leave is FMLA qualifying.
- d. An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.
- e. If an employee requires emergency medical treatment, they would not be required to follow the call-in procedure until their condition is stabilized and they have access to, and is able to use, a phone.

VI. [Employer Notice Requirements](#)

A. Posting general notice.

- 1. All employers are required to post, in conspicuous places, notices explaining the provisions of the FMLA.
- 2. Electronic posting is sufficient. See the Department of Labor (DOL) Web site for a prototype notice.

3. The DOL notice form may be used, or another format may be used so long as the information provided includes, at a minimum, all the information contained in the DOL notice.
- B. If the employer has an employee handbook or other document explaining employee benefits or leave rights, information concerning FMLA entitlement, and employer/employee responsibilities and obligations must be included.
- C. Eligibility notice
1. When an employee requests FMLA leave or when the employer acquires knowledge that an employee's leave may be for an FMLA qualifying reason, the employer must notify the employee of eligibility to take FMLA leave within 5 business days, absent extenuating circumstances.
 2. If the employee is not eligible, the notice must state at least one reason why.
 3. Notification of eligibility may be oral or in writing and employers may use DOL forms to provide notice.
- D. Rights and responsibilities notice.
1. Employers must provide written notice detailing the specific expectations and obligations of the employee and explain any consequences of a failure to meet these obligations.
 2. This notice must be provided each time an eligibility notice is provided.
 3. The notice must, at minimum, include, as appropriate:
 - a. That the leave may be designated and counted against the employee's annual FMLA leave entitlement;
 - b. Any requirements for the employee to furnish certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status, and the consequences of failing to do so;
 - c. That the employer will substitute paid leave and the employee's entitlement to take unpaid FMLA leave if they do not have sufficient accrued paid leave;

- d. Any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments, and the possible consequences of failure to make such payments on a timely basis;
 - e. The employee's rights to maintenance of benefits during the FMLA leave and restoration to the same or an equivalent job upon return from FMLA leave; and,
 - f. The employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.
4. The employer may use the appropriate DOL form as the notice of rights and responsibilities. This notice may be distributed electronically so long as it otherwise meets the requirements of this section.

E. Designation Notice

1. When the employer has enough information to determine whether the leave is being taken for an FMLA qualifying reason, the employer must notify the employee whether the leave will be designated and counted as FMLA leave within 5 business days absent extenuating circumstances.
 - a. At the time of designating the leave as FMLA leave; the employer must indicate that paid leave will be utilized when the employee has accumulated leave balances.
 - b. An employee with no accumulated sick or annual leave balances must take leave as unpaid, unless otherwise stipulated in other TBR leave policies.
 - c. TBR leave policies and the FMLA leave policies shall run concurrently and not consecutively.
2. Only one notice of designation is required for each FMLA qualifying reason per applicable 12-month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave, or intermittent or reduced schedule leave.

3. If the employer determines that the leave will not be designated as FMA qualifying, the employee must be so notified.
4. If the employer will require the employee to present a fitness-for-duty certification to be restored to employment, the employer must provide notice of such requirement with the designation notice.
 - a. If the fitness-for-duty certification must address the employee's ability to perform the essential functions of their position, the employer must so indicate in the designation notice, and must include a list of the essential functions of the position.
5. The designation notice must be in writing and the appropriate DOL form may be used for this purpose. If the leave cannot be designated as FMLA leave, the notice may be in the form of a simple written statement.
6. The employer must notify the employee of the amount of leave counted against their FMLA leave entitlement.
 - a. If the amount of leave needed is known at the time the leave is designated as FMLA leave, the employer must notify the employee of the number of hours, days or weeks that will be counted against the employee's FMLA leave entitlement in the designation notice.
 - b. If it is not possible to provide this information, such as in the case of unforeseeable intermittent leave, the employer must provide notice of the amount of leave counted against the employee's FMLA leave entitlement at the request of the employee, but no more often than once in a 30-day period and only if FMLA leave was taken in that period.

VII. Designation of FMLA Leave

A. Employer responsibilities.

1. The decision to designate leave as FMLA qualifying must be based only on information received from the employee or the employee's spokesperson.

2. If the employer does not have sufficient information about the reason for the use of leave, the employer should inquire further of the employee or spokesman.
 3. The employer must then provide the appropriate notice pursuant to the prior section.
- B. Employee responsibilities
1. An employee giving notice of the need for FMLA leave does not need to expressly assert rights under the FMLA or even mention the FMLA to meet the obligation to provide notice, though they would need to state a qualifying reason for the needed leave and otherwise satisfy the notice requirements of Section V.
 2. If an employee fails to adequately explain the need for FMLA leave, the request may be denied.
- C. Retroactive designation.
1. The employer may retroactively designate leave as FMLA leave with appropriate notice to the employee provided the employer's failure to timely designate leave does not cause harm or injury to the employee.

VIII. Certification

- A. General
1. A request for certification must be made in writing.
 2. The employer should make a request for certification at the time the employee gives notice of the need for leave or within 5 business days thereafter; or, in the case of unforeseen leave, within 5 business days after the leave begins.
 3. The employee must provide the requested certification within 15 calendar days after the request unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. The employee is responsible for paying any costs associated with obtaining a certification or recertification, and any necessary clarification or authentication.
 4. If the employee does not provide a complete and sufficient certificate, the employer must state in writing what additional information is necessary to make the certification complete and sufficient. If items on the certification are not filled in, or

the information provided is vague, ambiguous or non-responsive, the certification may be considered incomplete. The employee must be allowed 7 calendar days to cure any deficiencies.

5. No information beyond that specified below in Section IX may be required to be provided.
6. The employee may provide the employer with an authorization, release or waiver allowing the employer to communicate directly with the HCP, but the employee must not be required to do so.

B. Consequences

1. At the time the employer requests certification, the employee must be advised that the FMLA leave request may be denied if the certification is incomplete or insufficient despite the opportunity to cure the deficiencies, or if the employee fails to provide any certification.
2. It is the employee's responsibility to furnish a complete and sufficient certification, or to furnish the HCP the necessary authorization to complete the certification.
3. These principles apply whether the request is the initial certification, a recertification, a second or third opinion, or a fitness for duty certificate, including any clarifications necessary to determine if such certifications are authentic and sufficient.

IX. Certification of Serious Health Condition of Employee or a Covered Family Member

A. Permissible information

1. The name, address, telephone number and fax number of the HCP, and type of medical practice/specialization;
2. The approximate date on which the serious health condition began, and its probable duration;
3. A statement or description of appropriate medical facts regarding the patient's health condition for which FMLA leave is requested.
 - a. These facts must be sufficient to support the need for leave and may include information on symptoms, diagnosis, hospitalization, doctor visits, whether

medication has been prescribed, any referrals for evaluation or treatment, or any other regimen of continuing treatment.

4. If the employee is the patient, information sufficient to establish that they cannot perform the essential functions of their job, the nature of any other work restrictions; and, the likely duration of such inability.
 5. If the patient is a covered family member, information sufficient to establish that the family member is in need of care, and an estimate of the frequency and duration of the leave required to care for the family member.
 6. If the employee requests leave on an intermittent or reduced schedule basis for planned medical treatment for themselves, or a family member, information sufficient to establish the medical necessity and an estimate of the dates and duration of such treatments and any periods of recovery.
 7. If the employee requests leave on an intermittent or reduced schedule basis for a serious health condition, including pregnancy, that may result in unforeseeable episodes of incapacity, information sufficient to establish the medical necessity for such leave and an estimate of the frequency and duration of the episodes of incapacity.
 8. If the employee requests leave on an intermittent or reduced schedule basis to care for a covered family member, a statement that such leave is medically necessary to care for the family member who can include assisting in recovery, and an estimate of the frequency and duration of the required leave.
- B. The appropriate DOL form may be used to obtain information concerning the employee's serious health condition or the serious health condition of a covered family member. These forms may also be used if seeking second and third opinions.
- C. Workers' compensation - If the employee is concurrently on FMLA leave and workers' compensation leave, the FMLA does not prevent the employer from following the workers' compensation provisions in seeking information even if such would allow

inquires beyond that allowed under the FMLA. Information received may be considered in determining the employee's entitlement to FMLA protected leave.

D. ADAAA - If the employee's serious health condition may also be a disability pursuant to the ADAAA, the FMLA does not prevent the employer from following the procedures for requesting medical information under the ADAAA. Any information received may be considered in determining the employee's entitlement to FMLA protected leave.

E. Clarification and authentication of certification.

1. If the employee submits an incomplete or insufficient certification signed by the HCP, the employer may contact the HCP for purposes of clarification and authentication.
 - a. The employee must first have been given 7 calendar days to cure the deficiency.
 - b. Employers may not ask for additional information beyond that required by the certification form as set out in Section IX.A.
2. The employee must provide an authorization for the employer to contact the HCP.
3. A HCP, human resources professional, leave administrator or a management official may contact the HCP for clarification or authentication. Under no circumstances shall the employee's direct supervisor contact the HCP.
4. "Authentication" means providing the HCP with a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the HCP who signed the document.
5. "Clarification" means contacting the HCP to understand the handwriting on the medical certification or to understand the meaning of a response.
6. It is the employee's responsibility to provide a complete and sufficient certification and to clarify the certification if necessary. Failure to do so or failure to provide authorization to contact the HCP may result in the denial of FMLA leave.

F. Second and Third Opinions

1. Second opinion

- a. If the employer doubts the validity of a certification, the employee may be required to obtain a second opinion which shall be at the employer's expense.
 - b. The employer is permitted to designate the HCP but the HCP must not be employed on a regular basis by the employer.
 - 2. Third opinion
 - a. If the first and second opinions differ, the employer may require the employee to obtain certification from a third HCP at the employer's expense.
 - b. The third HCP must be designated or approved jointly by the employer and the employee.
 - c. The third opinion shall be final and binding.
 - 3. Pending receipt of a second or third opinion, the employee is provisionally entitled to the benefits of the FMLA, including maintenance of group health benefits.
- G. FMLA leave may be denied and the leave designated as paid or unpaid under the employer's established leave policies if:
- 1. The certifications do not ultimately establish entitlement to FMLA leave; or,
 - 2. The employee fails to provide authorization for their HCP to release all relevant medical information pertaining to the serious health condition at issue if requested by the HCP designated to provide the second or third opinion.
- H. Recertification
- 1. 30-day rule - An employer may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless sections 2 or 3 apply.
 - 2. More than 30 days
 - a. If the medical certification indicates the minimum duration of the condition is more than 30 days, an employer must wait until that minimum duration period expires before requesting a recertification.
 - b. Notwithstanding the limitation set forth above, an employer may request a recertification every 6 months in connection with an absence by the employee.

3. Less than 30 days - An employer may request certification in less than 30 days if:
 - a. The employee requests an extension of leave;
 - b. Circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, or complications); or,
 - c. The employer receives information that casts doubt on the stated reason for the absence or the continuing validity of the certification.
4. The employee must provide the recertification within the timeframe requested by the employer which must allow no less than 15 calendar days.
5. The employer may ask for the same information as that permitted for the original certification, and the employee has the same obligation to participate and cooperate in providing a complete and sufficient certification.
6. The employer may provide the HCP with a record of the employee's absence pattern and ask if the serious health condition and need for leave is consistent with such a pattern.
7. Any recertification requested by the employer may be at the employee's expense.
8. No second or third opinion on recertification may be required.

X. [Certification of Qualifying Exigency](#)

A. Active duty orders

1. The first time an employee requests leave based on a qualifying exigency arising out of the active duty or call to active duty status of a covered military member, the employer may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military that indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the active duty service. This information need only be provided once.
2. A copy of new active duty orders or other documentation issued by the military shall be provided to the employer if the need for leave because of a qualifying exigency

arises out of a different active duty or call to active duty status of the same or a different covered military member.

B. Required information - The employer may require a certification from the employee that sets forth the following information:

1. A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency, including the type of qualifying exigency and any documentation which supports the request for leave.
2. The approximate date(s) of the qualifying exigency.
 - a. If the event is a single, continuous period of time, the beginning and end dates.
 - b. If the leave request is for an intermittent or reduced schedule, an estimate of the frequency and duration of the qualifying exigency.
3. If the event involves meeting with a third party, appropriate contact information for the third party, and a brief description of the purpose of the meeting.

C. The appropriate DOL form may be used. No information beyond that specified may be required.

D. Verification

1. If the certification is complete and sufficient to support the request for leave, no additional information may be requested.
2. However, if the qualifying exigency concerns meeting with a third party, the employer may contact the third party to verify the nature and time of the meeting.
3. The employer may contact the Department of Defense to request verification that a covered military member is on active duty or call to active duty status.
4. If verification occurs pursuant to either item 2 or 3, no additional information may be requested and the employee's permission is not required.

XI. [Certification for Service member \(Military Caregiver\) Leave](#)

A. Required information from HCP - An employer may require an employee to obtain a certification completed by any one of the following:

1. A United States Department of Defense ("DOD") HCP;

2. A United States Department of Veterans Affairs ("VA") HCP;
 3. A DOD TRICARE network authorized private HCP;
 4. A DOD non-network TRICARE authorized private HCP.
- B. If the authorized HCP is unable to make certain military-related determinations specified below, the authorized HCP may rely on determinations from an authorized DOD representative. An employer may request that the HCP provide the following information:
1. The name, address and appropriate contact information (telephone number, fax number, and/or email address) of the HCP, the type of medical practice, the medical specialty, and whether the health care provider is one of the following:
 - a. A DOD HCP;
 - b. A VA HCP;
 - c. A DOD TRICARE network authorized private HCP; or
 - d. A DOD non-network TRICARE authorized private HCP.
 2. Whether the covered Servicemember's injury or illness was incurred in the line of duty on active duty.
 3. The approximate date on which the serious injury or illness began and its probable duration.
 4. A statement or description of appropriate medical facts regarding the covered Servicemember's health condition for which FMLA leave is requested.
 - a. These facts must include information on whether the injury or illness may render the covered Service member medically unfit to perform the duties of the Servicemember's office, grade, rank or rating and whether the member is receiving medical treatment, recuperation or therapy.
 5. Information sufficient to establish that the covered Service member is in need of care and whether they will need care for a single continuous period of time, including any time for treatment and recovery, and an estimate as to the beginning and ending dates for this period of time.

6. If intermittent or reduced schedule leave is requested for planned medical treatment appointments, whether there is a medical necessity for the covered Service member to have such periodic care and an estimate of the treatment schedule of such appointments.
 7. If intermittent or reduced schedule leave is requested for other than planned medical treatment (e.g., episodic flare-ups of a medical condition), whether there is a medical necessity to have such periodic care, which can include assisting the covered Servicemember's recovery, and an estimate of the frequency and duration of the periodic care.
- C. The employer may also ask the employee and/or the covered Service member to include the following information in the certification:
1. The name and address of the employer of the employee requesting leave to care for a covered Service member, the name of the employee requesting such leave, and the name of the covered Service member for whom the employee is requesting leave to care.
 2. The relationship of the employee to the covered Service member.
 3. Whether the covered Service member is a member of the Armed Forces, the National Guard or Reserves; and their military branch, rank and current unit assignment.
 4. Whether the covered Service member is assigned to a military medical facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients, and the name of the medical treatment facility or unit.
 5. Whether the covered Service member is on the temporary disability retired list.
 6. A description of the care to be provided and an estimate of the leave needed to provide the care.
- D. The appropriate DOL form may be used to obtain certification that meets the FMLA's requirements.

1. No information may be required beyond that specified on the certification.
 2. Authentication and/or clarification of the certification may be sought.
 3. Second and third opinions and recertification are not permitted.
 4. Confirmation of covered family relationship to the covered Service member may be required.
- E. Invitational travel order (“ITO”) or invitational travel authorization (“ITA”).
1. An employer must accept an ITO or an ITA as sufficient certification to allow FMLA leave. No additional or separate certification may be required.
 2. If leave is needed beyond the period specified in the ITO/ITA, the employer may request certification from one of the authorized HCPs listed in B.1.
 3. The employer may seek authentication and clarification of the ITO/ITA. The employer may not seek a second or third opinion, or a recertification during the period of time in which leave is supported by an ITO/ITA.
 4. The employer may require an employee to provide confirmation of covered family relationship to the covered Service member.

XII. [Intent to Return to Work](#)

- A. An employer may require an employee on FMLA leave to report periodically on their status and intent to return to work.
- B. If an employee gives an unequivocal notice of intent not to return to work, the employer’s obligations under FMLA to maintain health benefits and to restore the employee cease.
1. However, these obligations continue if the employee indicates they may be unable to return to work but expresses a continuing desire to do so.
- C. An employee may need more leave than initially requested or the employee may not need as much leave as initially requested.
1. In the latter instance, the employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave.

2. The employer may require the employee to provide reasonable notice (i.e., within two business days) of the changed circumstances where foreseeable.
3. The employer may also obtain information on such changed circumstances through requested status reports.

XIII. [Fitness-for-Duty Certification](#)

- A. As a condition for restoring an employee whose own serious health condition required FMLA leave, the employer may impose a uniformly-applied policy or practice that requires all similarly-situated employees to provide certification from their HCPs that the employee is able to resume work.
- B. The fitness-for-duty certification may only pertain to the specific health condition that required FMLA leave.
- C. The certification must state that the employee is able to resume work.
 1. Additionally, the employer may require the certification to specifically address the employee's ability to perform the essential functions of their job.
 2. In order to do so, the employer must provide the employee with a list of the essential functions of the job no later than with the designation notice.
 3. The designation notice must indicate that the certification must address the employee's ability to perform those essential functions.
- D. Authentication and/or clarification of the certification is allowed. However, the employee's return to work may not be delayed while contact with the HCP is being made.
- E. No second or third opinions may be required.
- F. The cost of a return-to-work certification shall be borne by the employee.
- G. Restoration may be delayed until the employee submits a required fitness-for-duty certification if the employer has provided notice of the need for such in the designation notice.

- H. If a fitness-for-duty certification is required, an employee who does not provide such or who does not request additional FMLA leave is no longer entitled to reinstatement under the FMLA.
- I. Return from intermittent or reduced schedule leave.
 - 1. The employer may not require a new certification after each absence if the employee is on intermittent or reduced scheduled leave.
 - 2. However, an employer is entitled to a certification for such absences up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform their duties, based on the serious health condition for which leave was taken.
 - a. "Reasonable safety concerns" means a reasonable belief of significant risk of harm to the individual employee or others.
 - b. The nature and severity of the potential harm, and the likelihood that potential harm will occur must be considered in making this determination.
 - 3. The employer must inform the employee at the time the designation notice is issued that for each subsequent instance of intermittent or reduced schedule leave, the employee will be required to submit a fitness-for-duty certification unless one has already been submitted within the past 30 days.
 - 4. An employee may not be terminated while awaiting such a certification.
- J. If an employee's serious health condition may also be a disability under the ADAAA, the FMLA does not prevent the employer from following the procedures for requesting medical information under the ADAAA.

XIV. **Failure to Provide Certification**

- A. Foreseeable leave
 - 1. If the employee fails to provide certification in a timely manner, FMLA coverage may be denied until certification is provided.
- B. Unforeseeable leave

1. FMLA coverage may be denied if the employee fails to provide a certification within 15 calendar days from receipt of the request for certification unless not practicable due to extenuating circumstances.
 - a. Absent those circumstances, if the employee fails to timely return the certification, FMLA protections can be denied following expiration of the 15-day time period until a sufficient certification is provided.
 - b. If the employee never produces the certification, the leave is not FMLA leave.

C. Recertification

1. An employee must provide recertification within the time requested by the employer (which must allow at least 15 calendar days after the request) or as soon as practicable under the particular facts and circumstances.
 - a. Failure to do so may result in denial of continuation of FMLA leave protections until a sufficient recertification is produced.
 - b. If one is never provided, the leave is not FMLA.
2. Recertification does not apply to leave taken for a qualifying exigency or to care for a covered Service member.

D. Fitness-for-duty

1. The employee must provide medical certification at the time they seek reinstatement if such is requested pursuant to the employer's policy or practice, if the employer provided the required notice.
2. If the employee fails to do so, restoration may be delayed until the certification is provided.
3. Unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated.

XV. [Job Restoration](#)

A. Right to Reinstatement

1. Upon returning from FMLA leave, an employee must be restored to their original position or to an equivalent position.
 - a. An equivalent position is one that is virtually identical to the former position in terms of pay, benefits and working conditions, including privileges, perquisites and status.
 - b. This involves restoration to a position having the same or substantially similar duties and responsibilities and having substantially equivalent skill, effort, responsibility and authority.
 - c. An employee is entitled to such reinstatement even if the employee has been replaced or their position has been restructured to accommodate the employee's absence.
 - d. This applies only to employees returning from FMLA leave and may not apply to employees who used additional leave beyond the 12/26 workweek FMLA entitlement, as provided in other TBR leave policies.
2. An employee returning from FMLA leave is entitled to any general or unconditional pay increases that all other employees have received during the period the employee was on leave.
3. An employee is entitled to shift or work schedule assignments equivalent to those in effect prior to the beginning of the leave period and to the same or a geographically proximate work location where previously employed.
4. 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.

B. Limitations on Reinstatement

1. An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period.

- a. 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.
 - 1. 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 returning from leave that other employees formerly on the shift no longer receive.
 - b. However, the employee is entitled to employment in a position meeting all other previous employment conditions.
 - c. An employer must be able to show that he/she would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment.
- 2. If an employee can no longer perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition or an injury or illness also covered by workers' compensation, the employee has no right to restoration to another position under the FMLA.
 - a. However, the provisions of the ADAAA may apply. Such cases should be referred to the ADAAA coordinator.
 - 3. If an employee should require more or less FMLA leave than was originally anticipated, they are required to provide the employer 2 business days' notice where feasible.
 - a. Regarding an employee who wants to return to work earlier than anticipated, they shall be restored once such notice is given, or where such notice is not feasible.
 - 4. In situations where an employee notifies the employer that they are not returning to work, the obligation to restore the employee to a position ends.

- a. Should the employee indicate they are unable to return to work but continues to want to return, restoration requirements remain in effect.
- 5. If an employee was hired for a specific term or only to perform work on a discrete project, the employer has no obligation to restore the employee if the employment term or project is over and the employer would not otherwise have continued to employ the employee.

XVI. **Prohibition against Interfering with Employee Rights**

- A. FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights.
- B. "Interfering with" the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave.
- C. FMLA's prohibition against interference prohibits an employer from discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise FMLA rights.
- D. Employees cannot waive, nor may employers induce employees to waive, their prospective rights under the FMLA.
- E. This does not prevent the settlement or release of FMLA claims by employees based on past employer conduct without the approval of the Department of Labor or a court.

XVII. **Recordkeeping**

- A. Records must be made, kept and preserved in accordance with the recordkeeping requirements of the Fair Labor Standards Act.
 - 1. The records must be kept for no less than 3 years and made available for inspection, copying and transcription by representatives of the Department of Labor upon request.
- B. Required records:
 - 1. Basic payroll and identifying employee data.

2. Dates FMLA leave was taken. The leave must be designated in records as FMLA leave.
3. The hours of leave taken, if less than in increments of a day.
4. Employee notices provided to the employer and notices given to employees as required by the FMLA.
5. Documents describing employee benefits or employer policies and practices regarding paid and unpaid leave.
6. Premium payments of employee benefits.
7. Records of any dispute between the employer and an eligible employee regarding designation of leave as FMLA leave.

C. Confidential records

1. Records and documents relating to certifications, recertification or medical histories of the employee or their family members created for purposes of FMLA, shall be maintained as confidential medical records in separate files, separate from the usual personnel files.
2. If the ADAAA is also applicable, such records shall be maintained in conformance with ADAAA confidentiality requirements.

XVIII. **Impact of FMLA Leave on Health Insurance and Other Benefits**

A. Insurance Coverage

1. For the duration of FMLA leave, the employer 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.
 - a. It is very important that the employer communicate approval of FMLA leave to the insurance preparer.
2. The same health benefits provided to an employee prior to taking FMLA leave must be maintained during the FMLA leave.
 - a. For example, if family coverage is provided to an employee, family coverage must be maintained during the FMLA leave.

- b. 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 coverage(s) that were in effect prior to the FMLA leave period.
- 3. 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.
 - a. For example, if an 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.
- 4. Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave.
 - a. 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.
 - b. If the employee requests the changed coverage it must be provided by the employer.
- 5. The employer is responsible for advising the employee of the options to continue or discontinue insurance coverage(s) prior to the beginning of the leave period.
 - a. If the employee elects to continue insurance coverage(s), the employer must provide the employee with written notice of the terms and conditions under which premiums must be paid.
- 6. If coverage is not to be continued, the employee must contact the insurance preparer prior to the beginning of the leave.
 - a. When an employee returns from leave, the employee is entitled to be automatically 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.

7. To ensure that an employee on unpaid FMLA leave is reinstated with the same benefits in effect prior to the leave period, the employer shall pay the employer as well as any employee portion of premiums which has not been remitted. Premiums paid on behalf of the employee will be deducted from the employee's paycheck following their return to work.
 8. For purposes of determining insurance premium payment responsibilities, an employee is deemed to have returned to work if they have returned for 30 calendar days.
 - a. 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.
 - b. 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.
 9. If the employee fails to return to work due to a serious health condition, the employer may require medical certification of the employee's or the family member's serious health condition.
 10. The employer portion of the health premium may not be recovered during workers' compensation leave designated as FMLA leave.
- B. Longevity
1. An employee on FMLA leave, paid or unpaid, shall receive longevity in accordance with the provisions of TBR Guideline P-120 Longevity Pay.

2. Note: The employer may not eliminate benefits which otherwise would not be provided to part-time employees.
3. 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

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

Sources

Authority

T.C.A. § 49-8-203; [T.C.A. § 8-50-809](#)

All Federal and State statutes, codes, Acts, rules and regulations referenced in this policy.

History

TBR Meeting, June 25, 1995 (Finance and Administration approval January 17, 1996); TBR Meeting, March 29, 1996 (Finance and Administration approval November 13, 1996); TBR Meeting September 28, 2007; TBR Meeting June 26, 2008; TBR Meeting March 25, 2010 (Complete Revision); [TBR Meeting June 16, 2023 \(effective July 1, 2023\)](#).

Related Policies

- [Longevity Pay](#)

Family, Medical, and Service Member Leave:

5.01.01.14

Policy Area

Personnel Policies

Applicable Divisions

TCATs, Community Colleges, System Office

Purpose

In compliance with the Family and Medical Leave Act of 1993, as amended, ("FMLA" or "the Act") it is the policy of the Tennessee Board of Regents ("TBR") to provide eligible employees up to 12 workweeks of leave during a 12-month period for family or medical leave, or for a qualifying exigency; or, up to 26 workweeks of leave for military caregiver leave during a 12-month period for reasons specified in this Policy, 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.

Definitions

- State - shall be defined as any State agency, the TBR System, and/or the University of Tennessee System, for purposes of this policy.
- Other definitions are part of the policy text.

Policy

XIX. [Employee Eligibility](#)

- A. In order to be considered "eligible," 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) the employee has as of the date the leave actually begins.
- C. This policy applies to both regular and temporary employees.
- 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).
- F. The 12 months of required work with the State do not have to be consecutive in order for an employee to be eligible. However, employment prior to a break in service lasting 7 or more years will not be counted unless the break was due to fulfillment of a National Guard or Reserve military service obligation. The time served performing the military service must also be counted in determining whether the employee has been employed for at least 12 months by the employer.
- G. 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.
- H. In determining "hours worked" for the purposes of FMLA eligibility, all hours actually worked by an employee (including overtime hours) should be calculated.
 - 1. 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.
 - 2. In situations where a full-time 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 they have worked for the State for at least 12 months.
 - 3. For purposes of this policy, full-time faculty satisfy the 1,250 hour test.
- I. The determination of eligibility must be made as of the date the leave commences or within 5 business days (absent extenuating circumstances) of when notification of an FMLA qualifying event has been received.
 - 1. If an employee gives notice that leave is required before meeting the eligibility criteria, they must either be:
 - a. Provided with confirmation of when eligibility will be attained, based upon a projection; or

- b. Advised when the criteria have been met.
- 2. In the latter case, the notice of leave will remain current and outstanding until the employee is advised that eligibility has been attained.
- 3. Eligibility that is confirmed at the time the notice is received may not be subsequently challenged.
- 4. 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.
- 5. In addition, if notice of the need for leave has not been given more than 5 business days prior to commencement of the leave, a determination of eligibility must be confirmed within 5 business days following notice.
- 6. If such a determination is not provided, the employee will be considered eligible.
- J. Leave requests for regular employees who do not satisfy the FMLA eligibility requirements shall be processed in accordance with the appropriate TBR leave policies.

XX. **Leave Entitlement - FMLA Qualifying Events**

A. **Family Leave**

- 1. The birth of a son/daughter and to care for the newborn child.
 - a. 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. Husbands may also use FMLA to accompany an expectant spouse to prenatal visits, to care for an expectant spouse with a serious health condition, or if needed to care for the spouse following the birth of the child if the spouse has a serious health condition.
- 2. The adoptive or foster care placement of a son or daughter with the employee.
 - a. 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.

- b. 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, A.3., for age limitations for son/daughter.)
 - c. Paid Parental Leave: Eligible employees will receive six (6) weeks of paid parental leave in accordance with TBR Policy 5.01.01.08, Parental Leave. FMLA leave shall run concurrently with parental leave, whether paid or unpaid.
 - d. 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.
3. To care for the employee's spouse, son, daughter, or parent with a serious health condition, as defined below:
- a. Spouse: For purposes of this policy is defined by the U.S. Department of Labor - Family Medical Leave Act. (Code of Federal Regulations; 29 CFR 825.102 Definitions)
 - b. 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.
 - c. 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 Amendments Act of 2008 (ADAAA), 42 U.S.C. 12101 et seq., define these terms.

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

B. Medical Leave. The employee has a serious health condition resulting in an inability to perform job functions.

1. An employee is unable to perform the functions of their position if the Health Care Provider ("HCP") finds that the employee is:
 - a. Unable to work at all; or
 - b. Unable to perform any one of the position's essential functions within the meaning of the ADAAA, 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.
2. 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 HCP to review when requiring certification.

C. Service member [or Military Family] Leave

1. “Qualifying Exigency.” Employees with a spouse, son, daughter, or parent (“the Servicemember”) on covered active duty or a Federal call to covered active duty in the regular Armed Forces, the National Guard or Reserves, or a retired member of the regular Armed Forces or Reserves may use leave to address exigencies listed below arising out of the covered active duty or impending covered active duty deployment of the Service member to a foreign country:
 - a. Short-notice deployment (up to 7 days of leave);
 - b. Attending certain military events;
 - c. Child care or school activities;
 - d. Addressing financial and legal arrangements;
 - e. Periods of rest and recuperation with the Service member (up to 5 days of leave)
 - f. Attending counseling sessions related to active duty;
 - g. Attending post-deployment activities (available for up to 90 days after the termination of the covered Servicemember’s active duty status);
 - h. Other activities arising out of the Service member’s active duty or call to active duty, and agreed upon by the institution and employee.
2. Military Caregiver Leave
 - a. 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 the covered Service member who has a serious injury or illness incurred in the line of duty while on covered active duty in the Regular Armed Forces, National Guard or Reserves provided that such injury or illness may render the Service member medically unfit to perform duties for which the Service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.
 1. A serious health condition also includes any injury or illness that existed before the beginning of the Servicemember’s covered active duty that was aggravated by service in the line of duty on covered active duty.

2. A veteran of the regular Armed Forces, National Guard or Reserves will be considered a covered Service member for purposes of this leave entitlement if:
 1. They are undergoing medical treatment, recuperation or therapy for a serious injury or illness that was incurred by or aggravated while on covered active duty in the Armed Forces, whether or not the illness or injury manifested itself before or after the member became a veteran; and
 2. They were a member of the Armed Forces, National Guard, or Reserves at any time during the five-year period before beginning the treatment, recuperation or therapy.
- b. An employee may take up to 26 workweeks of leave on a per Service member, per injury/illness basis during a 12-month period, beginning on the first day of leave. However, no more than 26 workweeks of leave may be taken within any single 12-month period.
- c. "Next of kin" means the nearest blood relative other than the covered Servicemember's spouse, parent or child designated by the Service member in the following order of priority:
 1. A legal guardian or custodian; or
 2. A sibling, grandparent, aunt/uncle, or first cousin, unless the Service member has specifically designated in writing another blood relative as his/her nearest blood relative.

XXI. **FMLA definition of "a serious health condition" and "period of incapacity"**

- A. "Serious health condition" means an illness, injury, impairment, or physical or mental condition involving any of the following:
 1. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity; or
 2. Continuing treatment by a HCP which includes:

- a. A period of incapacity lasting more than 3 consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
 - 1. Treatment 2 or more times by or under the supervision of a HCP (i.e., in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); or
 - 2. Treatment on at least one occasion by a HCP (i.e., an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment. (e.g., prescription medication, physical therapy)
 - b. Any period of incapacity related to pregnancy or for prenatal care. A visit to the HCP is not necessary for each absence; or
 - c. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a HCP, and may involve episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). A visit to a HCP is not necessary for each absence; or
 - d. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, severe stroke, or terminal stages of a disease). Only supervision by a HCP is required, rather than active treatment; or
 - e. Any absences to receive multiple treatments, including any period of recovery therefrom, 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 3 days if not treated.
- B. "Period of incapacity" means an inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment or recovery.

- C. Absences due to pregnancy or prenatal care, or chronic conditions as specified above, fall within FMLA even if no treatment from a HCP is received, and even if the absence does not last more than 3 consecutive, full calendar days.

XXII. **Determination of the 12 Workweek/26 Workweek Periods**

A. Limitations on Length and Duration

1. Eligible employees are entitled to up to a total of 12 workweeks of leave for family or medical leave, and for a qualifying exigency under Service member leave; and, up to 26 workweeks of leave to care for a Service member with an injury or illness during a 12-month period.
 - a. The initial 12-month period starts on the date the employee's FMLA leave first begins.
 - b. A new 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period.
 1. For example, an employee who first uses FMLA leave on October 7, 2008, would have their 12-month period begin on that date and continue through October 6, 2009.
 2. If this employee subsequently needed to use FMLA leave starting on December 2, 2009, a new 12-month period would be established from that date forward through December 1, 2010.
2. A holiday that occurs within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave.
 - a. Exception: If the institution/System Office is temporarily closed for work for 1 or more weeks (e.g., closing for the Christmas/New Year holiday, summer breaks), those days do not count as FMLA leave.
 - b. If the employee takes intermittent leave, the holiday is not counted unless the employee would have been scheduled to work the holiday.

3. Overtime hours. If the employee is normally scheduled to work overtime but is unable to do so because of a serious health condition, the overtime missed may be counted as FMLA leave.
 - a. For example, if an employee would normally be required to work 48 hours in a particular week, but due to a serious health condition the employee is unable to work more than 40 hours that week, the employee would utilize 8 hours of FMLA protected leave.
 - b. Voluntary overtime hours that an employee does not work due to a serious health condition may not be counted against the employee's FMLA leave entitlement.
 4. Part-time employees receive FMLA leave on a pro rata or proportional basis.
 5. If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 workweeks prior to the beginning of the leave period would be used for calculating the employee's normal workweek.
- B. Leave entitlement for the birth of a child or for adoption or foster care placement of a child expires at the end of the 12-month period beginning on the date of the birth or placement. FMLA leave for these reasons must be concluded within this time period.
- C. Leave to care for an injured or ill Service member is to be applied on a per-covered Service member, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered Servicemember's or to care for the same Service member with a subsequent serious injury or illness. However, no more than 26 workweeks of leave may be taken within any single 12-month period.
- D. 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 12 workweeks of FMLA leave during a 12-month period if the leave is taken for the following reasons:
 - a. Birth of a child or for care of the child after birth; or

- b. Adoptive or foster care placement of a son or a daughter or for care of the child after placement; or
 - c. To care for a parent with a serious health condition.
 - d. However, each employee would be entitled to take 12 workweeks of FMLA leave to care for a child, including a newborn, 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 each has taken individually and 12 workweeks of FMLA leave for reasons other than those listed.
 - a. For example, if both spouses use 6 workweeks of leave for the birth of a child, each could take an additional 6 workweeks of leave for personal illness, or to care for a family member with a serious health condition.
 - b. In situations where FMLA leave is not taken due to birth, adoption, or foster care, or to care for a parent during a given year, each spouse is entitled to full 12 workweeks of leave.
 - c. Additionally, each employee would be entitled to take 12 workweeks of FMLA leave to care for a newborn child or child if that child has a serious health condition.
 - 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 Leave. The aggregate number of workweeks of leave to which both that husband and wife may be entitled is limited to 26 workweeks during a 12-month period.
- E. Use of an intermittent or reduced leave schedule.
- 1. "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.

2. An employee may take intermittent FMLA leave or have a reduced leave schedule over a 12-month time period when medically necessary for:
 - a. Planned and/or unanticipated medical treatment of a serious health condition by or under the supervision of a HCP;
 - b. Recovery from the condition;
 - c. Recovery from treatment of the condition; or
 - d. To provide care to an immediate family member with a serious health condition.
 1. 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.
3. 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 HCP.
4. If an employee requests intermittent leave or leave resulting in a reduced work schedule, the employer 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.
 - a. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave.
 - b. This temporary position must have equivalent pay and benefits, but need not have equivalent duties.
 - c. For information regarding benefits (e.g., insurance and longevity) not ordinarily provided to part-time employees that may not be eliminated, see Section XVIII.
 - d. 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).

- e. When an employee who transferred to an alternative position is able to return to full-time work, they shall be placed in the same or equivalent position as the job held when the leave commenced.
 - f. An employee cannot be required to take more FMLA leave than the circumstance for the leave requires.
5. The employer must account for intermittent or reduced leave using an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave provided that it is not greater than one hour and provided further that an employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken.

XXIII. **Employee Notice Requirements**

A. General.

- 1. An employee giving notice of the need for FMLA leave does not need to expressly assert rights under the Act or even mention the FMLA to meet the obligation to provide notice though the employee would need to state a qualifying reason for the needed leave and otherwise satisfy the notice requirements.
- 2. However, if the employee fails to explain the reasons for the leave, the request may be denied.

B. Foreseeable leave

1. Timing of notice

- a. The employee must provide at least 30 days advance notice before the leave is to begin, or if 30 days is not practicable, as soon thereafter as possible. The employer may require the employee to explain the reasons why notice was not given at least 30 days prior to the leave.
- b. Notice need be given only once but the employee shall advise the employer as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown.

2. Content of notice

- a. An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs FMLA qualifying leave, and the anticipated timing and duration of the leave.
- b. The employer may request medical certification to support the need for the leave to determine if the condition qualifies as a serious health condition. The employer may request certification to support the need for leave for a qualifying exigency or for military caregiver leave.
- c. An employee has an obligation to respond to an employer's questions designed to determine whether an absence is potentially FMLA qualifying. Failure to respond to reasonable employer inquiries may result in denial of FMLA protection if the employer is unable to determine whether the leave is FMLA qualifying.
- d. An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

3. Scheduling leave

- a. The employee must consult with the employer and make a reasonable effort to schedule planned medical treatments so as not to unduly disrupt the employer's operations subject to the approval of the HCP.
- b. Intermittent leave or leave on a reduced schedule must be medically necessary due to a serious health condition, injury or illness. The employee and employer shall attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting the employer's operation, subject to the approval of the health care provider.

C. Unforeseeable Leave

1. Timing of notice

- a. An employee must provide notice as soon as practicable under the facts and circumstances of the case.

- b. Notice may be given by the employee's spokesperson if the employee is unable to do so personally.
- 2. Content of notice
 - a. An employee shall provide sufficient information for an employer to reasonably determine whether the FMLA may apply to the leave request, and the anticipated duration of the absence.
 - b. Calling in sick without providing more information will not be considered sufficient notice to trigger an employer's obligations under the FMLA. The employer may obtain any additional required information by contacting the employee or the employee's spokesperson through informal means.
 - c. The employee has an obligation to respond to an employer's questions designed to determine whether an absence is potentially FMLA qualifying. Failure to respond to reasonable employer inquiries may result in denial of FMLA protection if the employer is unable to determine whether the leave is FMLA qualifying.
 - d. An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.
 - e. If an employee requires emergency medical treatment, they would not be required to follow the call-in procedure until their condition is stabilized and they have access to, and is able to use, a phone.

XXIV. [Employer Notice Requirements](#)

- A. Posting general notice.
 - 1. All employers are required to post, in conspicuous places, notices explaining the provisions of the FMLA.
 - 2. Electronic posting is sufficient. See the Department of Labor (DOL) Web site for a prototype notice.

3. The DOL notice form may be used, or another format may be used so long as the information provided includes, at a minimum, all the information contained in the DOL notice.
- B. If the employer has an employee handbook or other document explaining employee benefits or leave rights, information concerning FMLA entitlement, and employer/employee responsibilities and obligations must be included.
- C. Eligibility notice
1. When an employee requests FMLA leave or when the employer acquires knowledge that an employee's leave may be for an FMLA qualifying reason, the employer must notify the employee of eligibility to take FMLA leave within 5 business days, absent extenuating circumstances.
 2. If the employee is not eligible, the notice must state at least one reason why.
 3. Notification of eligibility may be oral or in writing and employers may use DOL forms to provide notice.
- D. Rights and responsibilities notice.
1. Employers must provide written notice detailing the specific expectations and obligations of the employee and explain any consequences of a failure to meet these obligations.
 2. This notice must be provided each time an eligibility notice is provided.
 3. The notice must, at minimum, include, as appropriate:
 - a. That the leave may be designated and counted against the employee's annual FMLA leave entitlement;
 - b. Any requirements for the employee to furnish certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status, and the consequences of failing to do so;
 - c. That the employer will substitute paid leave and the employee's entitlement to take unpaid FMLA leave if they do not have sufficient accrued paid leave;

- d. Any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments, and the possible consequences of failure to make such payments on a timely basis;
 - e. The employee's rights to maintenance of benefits during the FMLA leave and restoration to the same or an equivalent job upon return from FMLA leave; and,
 - f. The employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.
4. The employer may use the appropriate DOL form as the notice of rights and responsibilities. This notice may be distributed electronically so long as it otherwise meets the requirements of this section.

E. Designation Notice

1. When the employer has enough information to determine whether the leave is being taken for an FMLA qualifying reason, the employer must notify the employee whether the leave will be designated and counted as FMLA leave within 5 business days absent extenuating circumstances.
 - a. At the time of designating the leave as FMLA leave; the employer must indicate that paid leave will be utilized when the employee has accumulated leave balances.
 - b. An employee with no accumulated sick or annual leave balances must take leave as unpaid, unless otherwise stipulated in other TBR leave policies.
 - c. TBR leave policies and the FMLA leave policies shall run concurrently and not consecutively.
2. Only one notice of designation is required for each FMLA qualifying reason per applicable 12-month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave, or intermittent or reduced schedule leave.

3. If the employer determines that the leave will not be designated as FMA qualifying, the employee must be so notified.
4. If the employer will require the employee to present a fitness-for-duty certification to be restored to employment, the employer must provide notice of such requirement with the designation notice.
 - a. If the fitness-for-duty certification must address the employee's ability to perform the essential functions of their position, the employer must so indicate in the designation notice, and must include a list of the essential functions of the position.
5. The designation notice must be in writing and the appropriate DOL form may be used for this purpose. If the leave cannot be designated as FMLA leave, the notice may be in the form of a simple written statement.
6. The employer must notify the employee of the amount of leave counted against their FMLA leave entitlement.
 - a. If the amount of leave needed is known at the time the leave is designated as FMLA leave, the employer must notify the employee of the number of hours, days or weeks that will be counted against the employee's FMLA leave entitlement in the designation notice.
 - b. If it is not possible to provide this information, such as in the case of unforeseeable intermittent leave, the employer must provide notice of the amount of leave counted against the employee's FMLA leave entitlement at the request of the employee, but no more often than once in a 30-day period and only if FMLA leave was taken in that period.

XXV. [Designation of FMLA Leave](#)

- A. Employer responsibilities.
 1. The decision to designate leave as FMLA qualifying must be based only on information received from the employee or the employee's spokesperson.

2. If the employer does not have sufficient information about the reason for the use of leave, the employer should inquire further of the employee or spokesman.
 3. The employer must then provide the appropriate notice pursuant to the prior section.
- B. Employee responsibilities
1. An employee giving notice of the need for FMLA leave does not need to expressly assert rights under the FMLA or even mention the FMLA to meet the obligation to provide notice, though they would need to state a qualifying reason for the needed leave and otherwise satisfy the notice requirements of Section V.
 2. If an employee fails to adequately explain the need for FMLA leave, the request may be denied.
- C. Retroactive designation.
1. The employer may retroactively designate leave as FMLA leave with appropriate notice to the employee provided the employer's failure to timely designate leave does not cause harm or injury to the employee.

XXVI. Certification

- A. General
1. A request for certification must be made in writing.
 2. The employer should make a request for certification at the time the employee gives notice of the need for leave or within 5 business days thereafter; or, in the case of unforeseen leave, within 5 business days after the leave begins.
 3. The employee must provide the requested certification within 15 calendar days after the request unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. The employee is responsible for paying any costs associated with obtaining a certification or recertification, and any necessary clarification or authentication.
 4. If the employee does not provide a complete and sufficient certificate, the employer must state in writing what additional information is necessary to make the certification complete and sufficient. If items on the certification are not filled in, or

the information provided is vague, ambiguous or non-responsive, the certification may be considered incomplete. The employee must be allowed 7 calendar days to cure any deficiencies.

5. No information beyond that specified below in Section IX may be required to be provided.
6. The employee may provide the employer with an authorization, release or waiver allowing the employer to communicate directly with the HCP, but the employee must not be required to do so.

B. Consequences

1. At the time the employer requests certification, the employee must be advised that the FMLA leave request may be denied if the certification is incomplete or insufficient despite the opportunity to cure the deficiencies, or if the employee fails to provide any certification.
2. It is the employee's responsibility to furnish a complete and sufficient certification, or to furnish the HCP the necessary authorization to complete the certification.
3. These principles apply whether the request is the initial certification, a recertification, a second or third opinion, or a fitness for duty certificate, including any clarifications necessary to determine if such certifications are authentic and sufficient.

XXVII. **Certification of Serious Health Condition of Employee or a Covered Family Member**

A. Permissible information

1. The name, address, telephone number and fax number of the HCP, and type of medical practice/specialization;
2. The approximate date on which the serious health condition began, and its probable duration;
3. A statement or description of appropriate medical facts regarding the patient's health condition for which FMLA leave is requested.
 - a. These facts must be sufficient to support the need for leave and may include information on symptoms, diagnosis, hospitalization, doctor visits, whether

medication has been prescribed, any referrals for evaluation or treatment, or any other regimen of continuing treatment.

4. If the employee is the patient, information sufficient to establish that they cannot perform the essential functions of their job, the nature of any other work restrictions; and, the likely duration of such inability.
 5. If the patient is a covered family member, information sufficient to establish that the family member is in need of care, and an estimate of the frequency and duration of the leave required to care for the family member.
 6. If the employee requests leave on an intermittent or reduced schedule basis for planned medical treatment for themselves, or a family member, information sufficient to establish the medical necessity and an estimate of the dates and duration of such treatments and any periods of recovery.
 7. If the employee requests leave on an intermittent or reduced schedule basis for a serious health condition, including pregnancy, that may result in unforeseeable episodes of incapacity, information sufficient to establish the medical necessity for such leave and an estimate of the frequency and duration of the episodes of incapacity.
 8. If the employee requests leave on an intermittent or reduced schedule basis to care for a covered family member, a statement that such leave is medically necessary to care for the family member who can include assisting in recovery, and an estimate of the frequency and duration of the required leave.
- B. The appropriate DOL form may be used to obtain information concerning the employee's serious health condition or the serious health condition of a covered family member. These forms may also be used if seeking second and third opinions.
- C. Workers' compensation - If the employee is concurrently on FMLA leave and workers' compensation leave, the FMLA does not prevent the employer from following the workers' compensation provisions in seeking information even if such would allow

inquires beyond that allowed under the FMLA. Information received may be considered in determining the employee's entitlement to FMLA protected leave.

- D. ADAAA - If the employee's serious health condition may also be a disability pursuant to the ADAAA, the FMLA does not prevent the employer from following the procedures for requesting medical information under the ADAAA. Any information received may be considered in determining the employee's entitlement to FMLA protected leave.
- E. Clarification and authentication of certification.
 - 1. If the employee submits an incomplete or insufficient certification signed by the HCP, the employer may contact the HCP for purposes of clarification and authentication.
 - a. The employee must first have been given 7 calendar days to cure the deficiency.
 - b. Employers may not ask for additional information beyond that required by the certification form as set out in Section IX.A.
 - 2. The employee must provide an authorization for the employer to contact the HCP.
 - 3. A HCP, human resources professional, leave administrator or a management official may contact the HCP for clarification or authentication. Under no circumstances shall the employee's direct supervisor contact the HCP.
 - 4. "Authentication" means providing the HCP with a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the HCP who signed the document.
 - 5. "Clarification" means contacting the HCP to understand the handwriting on the medical certification or to understand the meaning of a response.
 - 6. It is the employee's responsibility to provide a complete and sufficient certification and to clarify the certification if necessary. Failure to do so or failure to provide authorization to contact the HCP may result in the denial of FMLA leave.
- F. Second and Third Opinions
 - 1. Second opinion

- a. If the employer doubts the validity of a certification, the employee may be required to obtain a second opinion which shall be at the employer's expense.
 - b. The employer is permitted to designate the HCP but the HCP must not be employed on a regular basis by the employer.
 - 2. Third opinion
 - a. If the first and second opinions differ, the employer may require the employee to obtain certification from a third HCP at the employer's expense.
 - b. The third HCP must be designated or approved jointly by the employer and the employee.
 - c. The third opinion shall be final and binding.
 - 3. Pending receipt of a second or third opinion, the employee is provisionally entitled to the benefits of the FMLA, including maintenance of group health benefits.
- G. FMLA leave may be denied and the leave designated as paid or unpaid under the employer's established leave policies if:
- 1. The certifications do not ultimately establish entitlement to FMLA leave; or,
 - 2. The employee fails to provide authorization for their HCP to release all relevant medical information pertaining to the serious health condition at issue if requested by the HCP designated to provide the second or third opinion.
- H. Recertification
- 1. 30-day rule - An employer may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless sections 2 or 3 apply.
 - 2. More than 30 days
 - a. If the medical certification indicates the minimum duration of the condition is more than 30 days, an employer must wait until that minimum duration period expires before requesting a recertification.
 - b. Notwithstanding the limitation set forth above, an employer may request a recertification every 6 months in connection with an absence by the employee.

3. Less than 30 days - An employer may request certification in less than 30 days if:
 - a. The employee requests an extension of leave;
 - b. Circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, or complications); or,
 - c. The employer receives information that casts doubt on the stated reason for the absence or the continuing validity of the certification.
4. The employee must provide the recertification within the timeframe requested by the employer which must allow no less than 15 calendar days.
5. The employer may ask for the same information as that permitted for the original certification, and the employee has the same obligation to participate and cooperate in providing a complete and sufficient certification.
6. The employer may provide the HCP with a record of the employee's absence pattern and ask if the serious health condition and need for leave is consistent with such a pattern.
7. Any recertification requested by the employer may be at the employee's expense.
8. No second or third opinion on recertification may be required.

XXVIII. Certification of Qualifying Exigency

A. Active duty orders

1. The first time an employee requests leave based on a qualifying exigency arising out of the active duty or call to active duty status of a covered military member, the employer may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military that indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the active duty service. This information need only be provided once.
2. A copy of new active duty orders or other documentation issued by the military shall be provided to the employer if the need for leave because of a qualifying exigency

arises out of a different active duty or call to active duty status of the same or a different covered military member.

B. Required information - The employer may require a certification from the employee that sets forth the following information:

1. A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency, including the type of qualifying exigency and any documentation which supports the request for leave.
2. The approximate date(s) of the qualifying exigency.
 - a. If the event is a single, continuous period of time, the beginning and end dates.
 - b. If the leave request is for an intermittent or reduced schedule, an estimate of the frequency and duration of the qualifying exigency.
3. If the event involves meeting with a third party, appropriate contact information for the third party, and a brief description of the purpose of the meeting.

C. The appropriate DOL form may be used. No information beyond that specified may be required.

D. Verification

1. If the certification is complete and sufficient to support the request for leave, no additional information may be requested.
2. However, if the qualifying exigency concerns meeting with a third party, the employer may contact the third party to verify the nature and time of the meeting.
3. The employer may contact the Department of Defense to request verification that a covered military member is on active duty or call to active duty status.
4. If verification occurs pursuant to either item 2 or 3, no additional information may be requested and the employee's permission is not required.

XXIX. [Certification for Service member \(Military Caregiver\) Leave](#)

A. Required information from HCP - An employer may require an employee to obtain a certification completed by any one of the following:

1. A United States Department of Defense ("DOD") HCP;

2. A United States Department of Veterans Affairs ("VA") HCP;
 3. A DOD TRICARE network authorized private HCP;
 4. A DOD non-network TRICARE authorized private HCP.
- B. If the authorized HCP is unable to make certain military-related determinations specified below, the authorized HCP may rely on determinations from an authorized DOD representative. An employer may request that the HCP provide the following information:
1. The name, address and appropriate contact information (telephone number, fax number, and/or email address) of the HCP, the type of medical practice, the medical specialty, and whether the health care provider is one of the following:
 - a. A DOD HCP;
 - b. A VA HCP;
 - c. A DOD TRICARE network authorized private HCP; or
 - d. A DOD non-network TRICARE authorized private HCP.
 2. Whether the covered Servicemember's injury or illness was incurred in the line of duty on active duty.
 3. The approximate date on which the serious injury or illness began and its probable duration.
 4. A statement or description of appropriate medical facts regarding the covered Servicemember's health condition for which FMLA leave is requested.
 - a. These facts must include information on whether the injury or illness may render the covered Service member medically unfit to perform the duties of the Servicemember's office, grade, rank or rating and whether the member is receiving medical treatment, recuperation or therapy.
 5. Information sufficient to establish that the covered Service member is in need of care and whether they will need care for a single continuous period of time, including any time for treatment and recovery, and an estimate as to the beginning and ending dates for this period of time.

6. If intermittent or reduced schedule leave is requested for planned medical treatment appointments, whether there is a medical necessity for the covered Service member to have such periodic care and an estimate of the treatment schedule of such appointments.
 7. If intermittent or reduced schedule leave is requested for other than planned medical treatment (e.g., episodic flare-ups of a medical condition), whether there is a medical necessity to have such periodic care, which can include assisting the covered Servicemember's recovery, and an estimate of the frequency and duration of the periodic care.
- C. The employer may also ask the employee and/or the covered Service member to include the following information in the certification:
1. The name and address of the employer of the employee requesting leave to care for a covered Service member, the name of the employee requesting such leave, and the name of the covered Service member for whom the employee is requesting leave to care.
 2. The relationship of the employee to the covered Service member.
 3. Whether the covered Service member is a member of the Armed Forces, the National Guard or Reserves; and their military branch, rank and current unit assignment.
 4. Whether the covered Service member is assigned to a military medical facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients, and the name of the medical treatment facility or unit.
 5. Whether the covered Service member is on the temporary disability retired list.
 6. A description of the care to be provided and an estimate of the leave needed to provide the care.
- D. The appropriate DOL form may be used to obtain certification that meets the FMLA's requirements.

1. No information may be required beyond that specified on the certification.
 2. Authentication and/or clarification of the certification may be sought.
 3. Second and third opinions and recertification are not permitted.
 4. Confirmation of covered family relationship to the covered Service member may be required.
- E. Invitational travel order (“ITO”) or invitational travel authorization (“ITA”).
1. An employer must accept an ITO or an ITA as sufficient certification to allow FMLA leave. No additional or separate certification may be required.
 2. If leave is needed beyond the period specified in the ITO/ITA, the employer may request certification from one of the authorized HCPs listed in B.1.
 3. The employer may seek authentication and clarification of the ITO/ITA. The employer may not seek a second or third opinion, or a recertification during the period of time in which leave is supported by an ITO/ITA.
 4. The employer may require an employee to provide confirmation of covered family relationship to the covered Service member.

XXX. **Intent to Return to Work**

- A. An employer may require an employee on FMLA leave to report periodically on their status and intent to return to work.
- B. If an employee gives an unequivocal notice of intent not to return to work, the employer’s obligations under FMLA to maintain health benefits and to restore the employee cease.
1. However, these obligations continue if the employee indicates they may be unable to return to work but expresses a continuing desire to do so.
- C. An employee may need more leave than initially requested or the employee may not need as much leave as initially requested.
1. In the latter instance, the employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave.

2. The employer may require the employee to provide reasonable notice (i.e., within two business days) of the changed circumstances where foreseeable.
3. The employer may also obtain information on such changed circumstances through requested status reports.

XXXI. **Fitness-for-Duty Certification**

- A. As a condition for restoring an employee whose own serious health condition required FMLA leave, the employer may impose a uniformly-applied policy or practice that requires all similarly-situated employees to provide certification from their HCPs that the employee is able to resume work.
- B. The fitness-for-duty certification may only pertain to the specific health condition that required FMLA leave.
- C. The certification must state that the employee is able to resume work.
 1. Additionally, the employer may require the certification to specifically address the employee's ability to perform the essential functions of their job.
 2. In order to do so, the employer must provide the employee with a list of the essential functions of the job no later than with the designation notice.
 3. The designation notice must indicate that the certification must address the employee's ability to perform those essential functions.
- D. Authentication and/or clarification of the certification is allowed. However, the employee's return to work may not be delayed while contact with the HCP is being made.
- E. No second or third opinions may be required.
- F. The cost of a return-to-work certification shall be borne by the employee.
- G. Restoration may be delayed until the employee submits a required fitness-for-duty certification if the employer has provided notice of the need for such in the designation notice.

- H. If a fitness-for-duty certification is required, an employee who does not provide such or who does not request additional FMLA leave is no longer entitled to reinstatement under the FMLA.
- I. Return from intermittent or reduced schedule leave.
 - 1. The employer may not require a new certification after each absence if the employee is on intermittent or reduced scheduled leave.
 - 2. However, an employer is entitled to a certification for such absences up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform their duties, based on the serious health condition for which leave was taken.
 - a. "Reasonable safety concerns" means a reasonable belief of significant risk of harm to the individual employee or others.
 - b. The nature and severity of the potential harm, and the likelihood that potential harm will occur must be considered in making this determination.
 - 3. The employer must inform the employee at the time the designation notice is issued that for each subsequent instance of intermittent or reduced schedule leave, the employee will be required to submit a fitness-for-duty certification unless one has already been submitted within the past 30 days.
 - 4. An employee may not be terminated while awaiting such a certification.
- J. If an employee's serious health condition may also be a disability under the ADAAA, the FMLA does not prevent the employer from following the procedures for requesting medical information under the ADAAA.

XXXII. **Failure to Provide Certification**

- A. Foreseeable leave
 - 1. If the employee fails to provide certification in a timely manner, FMLA coverage may be denied until certification is provided.
- B. Unforeseeable leave

1. FMLA coverage may be denied if the employee fails to provide a certification within 15 calendar days from receipt of the request for certification unless not practicable due to extenuating circumstances.
 - a. Absent those circumstances, if the employee fails to timely return the certification, FMLA protections can be denied following expiration of the 15-day time period until a sufficient certification is provided.
 - b. If the employee never produces the certification, the leave is not FMLA leave.
- C. Recertification
 1. An employee must provide recertification within the time requested by the employer (which must allow at least 15 calendar days after the request) or as soon as practicable under the particular facts and circumstances.
 - a. Failure to do so may result in denial of continuation of FMLA leave protections until a sufficient recertification is produced.
 - b. If one is never provided, the leave is not FMLA.
 2. Recertification does not apply to leave taken for a qualifying exigency or to care for a covered Service member.
- D. Fitness-for-duty
 1. The employee must provide medical certification at the time they seek reinstatement if such is requested pursuant to the employer's policy or practice, if the employer provided the required notice.
 2. If the employee fails to do so, restoration may be delayed until the certification is provided.
 3. Unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated.

XXXIII. [Job Restoration](#)

- A. Right to Reinstatement

1. Upon returning from FMLA leave, an employee must be restored to their original position or to an equivalent position.
 - a. An equivalent position is one that is virtually identical to the former position in terms of pay, benefits and working conditions, including privileges, perquisites and status.
 - b. This involves restoration to a position having the same or substantially similar duties and responsibilities and having substantially equivalent skill, effort, responsibility and authority.
 - c. An employee is entitled to such reinstatement even if the employee has been replaced or their position has been restructured to accommodate the employee's absence.
 - d. This applies only to employees returning from FMLA leave and may not apply to employees who used additional leave beyond the 12/26 workweek FMLA entitlement, as provided in other TBR leave policies.
2. An employee returning from FMLA leave is entitled to any general or unconditional pay increases that all other employees have received during the period the employee was on leave.
3. An employee is entitled to shift or work schedule assignments equivalent to those in effect prior to the beginning of the leave period and to the same or a geographically proximate work location where previously employed.
4. 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.

B. Limitations on Reinstatement

1. An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period.

- a. 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.
 - 1. 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 returning from leave that other employees formerly on the shift no longer receive.
 - b. However, the employee is entitled to employment in a position meeting all other previous employment conditions.
 - c. An employer must be able to show that he/she would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment.
- 2. If an employee can no longer perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition or an injury or illness also covered by workers' compensation, the employee has no right to restoration to another position under the FMLA.
 - a. However, the provisions of the ADAAA may apply. Such cases should be referred to the ADAAA coordinator.
 - 3. If an employee should require more or less FMLA leave than was originally anticipated, they are required to provide the employer 2 business days' notice where feasible.
 - a. Regarding an employee who wants to return to work earlier than anticipated, they shall be restored once such notice is given, or where such notice is not feasible.
 - 4. In situations where an employee notifies the employer that they are not returning to work, the obligation to restore the employee to a position ends.

- a. Should the employee indicate they are unable to return to work but continues to want to return, restoration requirements remain in effect.
- 5. If an employee was hired for a specific term or only to perform work on a discrete project, the employer has no obligation to restore the employee if the employment term or project is over and the employer would not otherwise have continued to employ the employee.

XXXIV. **Prohibition against Interfering with Employee Rights**

- A. FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights.
- B. "Interfering with" the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave.
- C. FMLA's prohibition against interference prohibits an employer from discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise FMLA rights.
- D. Employees cannot waive, nor may employers induce employees to waive, their prospective rights under the FMLA.
- E. This does not prevent the settlement or release of FMLA claims by employees based on past employer conduct without the approval of the Department of Labor or a court.

XXXV. **Recordkeeping**

- A. Records must be made, kept and preserved in accordance with the recordkeeping requirements of the Fair Labor Standards Act.
 - 1. The records must be kept for no less than 3 years and made available for inspection, copying and transcription by representatives of the Department of Labor upon request.
- B. Required records:
 - 1. Basic payroll and identifying employee data.

2. Dates FMLA leave was taken. The leave must be designated in records as FMLA leave.
 3. The hours of leave taken, if less than in increments of a day.
 4. Employee notices provided to the employer and notices given to employees as required by the FMLA.
 5. Documents describing employee benefits or employer policies and practices regarding paid and unpaid leave.
 6. Premium payments of employee benefits.
 7. Records of any dispute between the employer and an eligible employee regarding designation of leave as FMLA leave.
- C. Confidential records
1. Records and documents relating to certifications, recertification or medical histories of the employee or their family members created for purposes of FMLA, shall be maintained as confidential medical records in separate files, separate from the usual personnel files.
 2. If the ADAAA is also applicable, such records shall be maintained in conformance with ADAAA confidentiality requirements.

XXXVI. [Impact of FMLA Leave on Health Insurance and Other Benefits](#)

- A. Insurance Coverage
1. For the duration of FMLA leave, the employer 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.
 - a. It is very important that the employer communicate approval of FMLA leave to the insurance preparer.
 2. The same health benefits provided to an employee prior to taking FMLA leave must be maintained during the FMLA leave.
 - a. For example, if family coverage is provided to an employee, family coverage must be maintained during the FMLA leave.

- b. 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 coverage(s) that were in effect prior to the FMLA leave period.
- 3. 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.
 - a. For example, if an 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.
- 4. Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave.
 - a. 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.
 - b. If the employee requests the changed coverage it must be provided by the employer.
- 5. The employer is responsible for advising the employee of the options to continue or discontinue insurance coverage(s) prior to the beginning of the leave period.
 - a. If the employee elects to continue insurance coverage(s), the employer must provide the employee with written notice of the terms and conditions under which premiums must be paid.
- 6. If coverage is not to be continued, the employee must contact the insurance preparer prior to the beginning of the leave.
 - a. When an employee returns from leave, the employee is entitled to be automatically 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.

7. To ensure that an employee on unpaid FMLA leave is reinstated with the same benefits in effect prior to the leave period, the employer shall pay the employer as well as any employee portion of premiums which has not been remitted. Premiums paid on behalf of the employee will be deducted from the employee's paycheck following their return to work.
 8. For purposes of determining insurance premium payment responsibilities, an employee is deemed to have returned to work if they have returned for 30 calendar days.
 - a. 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.
 - b. 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.
 9. If the employee fails to return to work due to a serious health condition, the employer may require medical certification of the employee's or the family member's serious health condition.
 10. The employer portion of the health premium may not be recovered during workers' compensation leave designated as FMLA leave.
- B. Longevity
1. An employee on FMLA leave, paid or unpaid, shall receive longevity in accordance with the provisions of TBR Guideline P-120 Longevity Pay.

2. Note: The employer may not eliminate benefits which otherwise would not be provided to part-time employees.
 3. 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
1. Employees shall accrue leave in accordance with the annual and sick leave policies.
 2. Due to the fact that leave is based on the number of hours worked per week, the accrual rate may be proportionately reduced.

Sources

Authority

T.C.A. § 49-8-203; T.C.A. § 8-50-809

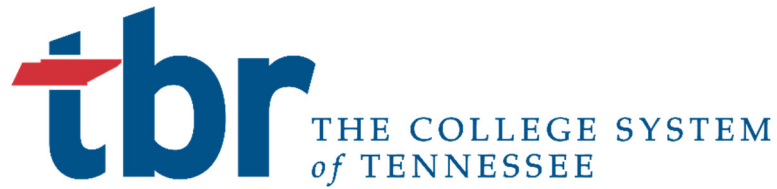
All Federal and State statutes, codes, Acts, rules and regulations referenced in this policy.

History

TBR Meeting, June 25, 1995 (Finance and Administration approval January 17, 1996); TBR Meeting, March 29, 1996 (Finance and Administration approval November 13, 1996); TBR Meeting September 28, 2007; TBR Meeting June 26, 2008; TBR Meeting March 25, 2010 (Complete Revision); TBR Meeting June 16, 2023 (effective July 1, 2023).

Related Policies

- [Longevity Pay](#)



Presidents Quarterly Meeting
May 3, 2023

SUBJECT: TBR Guideline P-060, Formation & Operation of Faculty Sick Leave Banks (Revisions)

PRESENTER: Brian Lapps

ACTION REQUIRED: Requires Vote

Summary:

New legislation effective July 1, 2023, adds the illness of a minor child to the qualifying events for which sick bank leave may be used. The revisions to the attached guidelines accomplish that revision. The Human Resources Officers will need to have discussions during the next policy cycle to decide whether to recommend changes to TBR Policy 5.01.01.15, Transfer of Sick Leave Between Employees.

Formation & Operation of Faculty Sick Leave Banks: P-060

Guideline Area

Personnel Guidelines

Applicable Divisions

TCATs, Community Colleges, System Office

Purpose

The purpose of this guideline is to establish the procedure for the formation and operation of faculty sick leave banks at institutions governed by the Tennessee Board of Regents.

Guideline

I. Authorization

- A. Pursuant to T.C.A. § 8-50-925, the following guideline shall be followed in the formation and operation of sick leave banks at all institutions governed by the Tennessee Board of Regents System.
 1. This guideline will be implemented in accordance with TBR Policy 5:01:01:00 - Employment~~mentee~~ Classification.

II. Establishment

- A. A sick leave bank is established when a group of employees agree to be assessed a specified number of accrued sick leave hours for a common pool.
 1. Such assessment of sick leave shall be deducted from the individual's personal accumulated sick leave and shall be nonrefundable.
- B. From this pool, the members may withdraw an amount of hours greater than their individual assessments upon request to and approval from the trustees of the sick leave bank.
- C. There can be no more than one faculty sick leave bank per institution.
 1. To form a sick leave bank, a minimum of 20 employees who are eligible to participate in the bank must petition the president designee of the institution to authorize and direct the establishment of the bank.

- a. The petition shall include a declaration that each petitioner intends to participate.

III. Eligibility

- A. Participation in the Faculty Sick Leave Bank will be available to regular full-time employees who hold faculty rank, whether serving in an academic or fiscal year appointment.
- B. Employees previously enrolled in the Staff Sick Leave Bank who are appointed to faculty positions with no breaks in service shall be eligible immediately for membership in the Faculty Sick Leave Bank with no additional assessment or waiting period required. Regarding transfers, no hours will be transferred between Staff and Faculty Sick Leave Banks.
- C. In addition, Members who are terminated and rehired with a break in service within a twelve (12) month period, following their enrollment shall be entitled to membership with no additional assessment. Employees rehired after one enrollment year will incur a new assessment during the annual enrollment period.
- D. A faculty member who transfers with no break in service from another TBR institution, the University of Tennessee, or state agency, and participated in the previous employer's sick leave bank is immediately eligible for membership in accordance with the receiving institution's sick leave bank plan. If the institutional sick leave bank plan allows, and if membership is requested at the time of the transfer, the faculty member shall donate the required minimum assessment.
- E. Employees who are unable to meet additional assessments charged by the Faculty Sick Leave Bank shall lose the right to request bank sick leave, in accordance with Section V.A. ~~914~~.
- F. All records regarding prior usage of bank sick leave may be made available to the Faculty Sick Leave Bank trustees.

IV. Trustees

- A. The president or designee of the institution will appoint five (5) sick leave bank trustees upon receipt of the petition.
 - 1. At least three (3) of the appointees shall be faculty who devote a majority of their time to classroom instruction.
 - 2. The remaining trustees may be members of the institution's administrative staff.
- B. Initially, two (2) of the trustees will be appointed for one (1) year, two (2) trustees for two (2) years, and one (1) trustee for three (3) years.
 - 1. Trustees shall be eligible for reappointment.
 - 2. Any vacancy resulting from expiration of a term, discontinuation of employment, retirement, death, resignation, or removal by the president or designee of a trustee from the trustee role shall be filled immediately by appointment by the president or designee of the institution.
 - 3. All actions by the trustees shall require three (3) affirmative votes.
- C. The trustees shall:
 - 1. Meet and elect a chairperson from the trustees.
 - 2. In coordination with Human Resources, be responsible for preparation of the sick leave bank plan of operation. The plan is subject to the president's or designee's review to ensure its compliance with these guidelines, board policy, institution or appropriate recordkeeping and accounting principles, and statutory provisions.
 - 3. In coordination with Human Resources, administer the bank and approve or reject requests for withdrawal of leave from the bank. The request for bank sick leave must be submitted to the trustees. The institutional sick leave bank plan of operation may allow the bank member's supervisor to be informed of any request for bank leave, prior to approval by the trustees.
 - 4. Adopt reasonable rules for the assessment and/or reassessment of sick leave hours by participants in order to maintain an adequate reserve of

usable days for bank members. This reserve shall only be established through the assessment and/or reassessment of bank membership and shall maintain a positive balance at all times. Any assessments shall be based upon total membership and projected potential need. All members shall be assessed the same amount of sick leave hours upon initial assessment and during any special reassessment. The trustees shall have sole discretion in determining how many assessments and/or reassessments are necessary to maintain the reserve's positive balance.

5. Keep all related information confidential.

V. Sick Leave Bank Plan

- A. The plan of operation prepared by the trustees shall include but not be limited to the following provisions:

1. An employee must have been a member of the bank for thirty (30) calendar days prior to applying for withdrawal of sick leave bank hours.
2. An employee must exhaust all accumulated sick leave and annual leave, if applicable, prior to receiving bank sick leave.
3. Bank sick leave shall not be used for: elective surgery, illness or death of any member of the individual's family, except the illness of a minor child, or during any period when the individual is receiving disability benefits from social security, a state-sponsored retirement plan or Board of Claims benefits. Approved bank sick leave will run concurrently with FMLA leave for an eligible employee who has not already exhausted the twelve (12) workweek entitlement.
4. A restriction may be established on the number of hours that may be withdrawn by an individual bank member on account of an illness known at the time they elected to join the bank.
5. Initial grants of bank sick leave to individual bank members shall not exceed the hourly equivalent of twenty (20) consecutive days for which the applicant

would have otherwise lost pay. Subsequent grants of bank sick leave shall not exceed the hourly equivalents of sixty (60) days in any fiscal year, or ninety (90) days for any one illness, or recurring diagnosed illness, or accident.

6. A member is limited up to a maximum of ninety (90) days from the sick leave bank as a result of a personal illness, injury, accident, disability, medical condition, quarantine or a condition related to, resulting from, or recurring from a previously diagnosed condition for which the bank granted sick leave. Grants from the sick leave bank shall not exceed ninety (90) days within a twelve (12) month period. The initial twelve (12) month period starts on the date the member's sick leave grants first begin and extends twelve (12) months forward from that date. A new twelve (12) month period would begin the first time sick bank grants begin again after completion of the previous twelve (12) month period. Grants from the sick leave bank terminate as of the date the member is released to return to work with or without restrictions.

a. The institution's sick leave bank plan of operation may impose a lifetime maximum of sick leave bank grants.

a-b. A bank member may be eligible to receive sick leave that has been donated by other employees if s/he has made application for bank sick leave and the necessity for bank leave is substantiated by the trustees. Should bank sick leave be denied, the bank member shall be eligible to receive donations from other employees as provided in TBR Policy

5.01.01.15 - Transfer of Sick Leave Between Employees.

7. When a bank member is physically or mentally unable to apply for bank sick leave, the immediate next-of-kin may make a request for bank sick leave on their behalf. If there is no next-of-kin available, this request may be made by the legally appointed guardian or conservator or an individual acting under valid power of attorney.

8. At any time, the trustees may request from a bank member a physician's statement certifying the illness or condition of the bank member requesting leave. Refusal to submit the certification will result in denial of the request for bank sick leave. The institution's sick leave bank plan of operation may require all members to submit supporting documentation when requesting bank sick leave.
9. A bank member shall lose the right to request bank sick leave upon termination of employment, retirement, cancelation of bank membership, refusal or inability to honor the trustee's assessments, and going on leave of absence (in a non-pay status) for reasons other than illness, injury, or disability.
10. A bank member may cancel their membership at any time upon written notification to the trustees. Assessed sick leave days shall be nonrefundable upon cancelation of membership and nontransferable upon transfer to another TBR institution, UT or State agency.
11. Employees who are granted bank sick leave shall continue to accrue sick leave and annual leave, if applicable, and service credit for retirement and longevity purposes, during the time they are on bank sick leave. Also, they will receive credit for any holidays that may occur during the bank sick leave period.
12. Grants of bank sick leave shall not be contingent upon repayment of hours used or waiver of other employment benefits or rights.
13. The trustees will meet either in person, by email, or by conference call, to approve or reject all requests for bank sick leave within ten (10) calendar days of receipt of the request. The number of calendar days to approve or reject sick leave bank requests will be established by the institution's sick leave bank plan of operation. ~~Unless otherwise specified in the institution's sick bank plan of operation.~~ The operation of the Faculty Sick Leave Bank

shall exist separately from the regular sick leave accrued to individuals' personal accounts with respect to approvals and appeals; the decisions of the trustees shall not be appealed beyond that body.

14. All records and official forms of the sick leave bank and minutes of the trustee meetings shall be maintained in the institution's human resources office, or in the appropriate office as determined by the president of the college of applied technology. All records shall be subject to audit by appropriate state officials.
15. An annual enrollment period shall be established by the trustees. The initial enrollment period shall last for a minimum of forty-five (45) calendar days from the date that eligible employees are notified of the bank's establishment. Subsequent annual enrollment periods shall not exceed one (1) calendar month. The trustees or designee shall notify all eligible employees of their eligibility status and the dates of the enrollment period. Enrollment forms and copies of the plan and its regulations shall be made available at this time also.
16. All eligible persons who elect to participate in the Faculty Sick Leave Bank shall be assessed a number of sick leave hours by the trustees—up to maximum hourly equivalent of three (3) days (22.5)—as the initial enrollment assessment.
17. The following official forms, as Exhibits, will be used to operate the sick leave bank:
 - a. Official Sick Leave Bank Election Form (Petition): Exhibit 1
 - b. Enrollment Form: Exhibit 2
 - c. Request for Bank Sick Leave: Exhibit 3
 - d. Notice to Sick Leave Bank Member of Assessment of Sick Leave Days: Exhibit 4
18. Formal minutes shall be made of the sick leave bank trustees' meetings and shall be maintained as a part of the official bank records.

VI. [Schedule Requirements](#)

- A. The following time schedule shall be followed in establishing the sick leave bank, and addressed within the institutional sick leave bank plan of operation:
 - 1. Petition Received by the President or designee:
 - a. Within thirty (30) calendar days of receipt of the petition, the president or designee shall appoint the trustees.
 - 2. Trustees Responsibilities
 - a. Within ten (10) calendar days of appointment, the trustees shall hold their first meeting and elect a chairperson.
 - b. Within sixty (60) calendar days before the effective date of the sick leave bank, the trustees shall notify all eligible employees of the establishment of the bank and its date of effectiveness.
 - 3. Effective Date
 - a. The president or designee, upon approval of the trustees' plan of operation, shall determine the date on which the sick leave bank becomes effective.
 - b. This date shall be no later than one hundred eighty (180) calendar days after the date of receipt of the original petition.

VII. [Dissolution of the Bank](#)




- A. The sick leave bank shall be dissolved if the institution is closed or if the bank membership falls below twenty (20) individuals.
- B. The total hours on deposit shall be returned to the participating members at the time of the dissolution and credited to their personal sick leave accumulation in proportion to the number of hours each has been assessed.

Exhibits

- [Configure](#)



[Exhibit 1 - Faculty Sick Leave Bank Election Form](#) (pdf /46.38 KB)

-  [Exhibit 2 - Faculty Sick Leave Bank Enrollment Form](#) (pdf /45.02 KB)
-  [Exhibit 3 - Faculty Sick Leave Bank Notice of Assessment](#) (pdf /36.95 KB)
-  [Exhibit 4 - Faculty Sick Leave Bank Request Form](#) (pdf /40.84 KB)

Sources

Authority

T.C.A. §§ 49-8-203; 8-50-925

History

November 1, 1988, Presidents Meeting, August 15, 1989, Presidents Meeting; November 12, 1996, Presidents Meeting; November 6, 2002, Presidents Meeting; February 2, 2016, Presidents Meeting; [Presidents Meeting May 3, 2023 \(effective July 1, 2023\)](#).

Related Policies

- [Employment Classification](#)
- [Transfer of Sick Leave Between Employees](#)

Formation & Operation of Faculty Sick Leave Banks: P-060

Guideline Area

Personnel Guidelines

Applicable Divisions

TCATs, Community Colleges, System Office

Purpose

The purpose of this guideline is to establish the procedure for the formation and operation of faculty sick leave banks at institutions governed by the Tennessee Board of Regents.

Guideline

VIII. [Authorization](#)

- A. Pursuant to T.C.A. § 8-50-925, the following guideline shall be followed in the formation and operation of sick leave banks at all institutions governed by the Tennessee Board of Regents System.
 - 1. This guideline will be implemented in accordance with TBR Policy 5.01.01.00 - Employment Classification.

IX. [Establishment](#)

- A. A sick leave bank is established when a group of employees agree to be assessed a specified number of accrued sick leave hours for a common pool.
 - 1. Such assessment of sick leave shall be deducted from the individual's personal accumulated sick leave and shall be nonrefundable.
- B. From this pool, the members may withdraw an amount of hours greater than their individual assessments upon request to and approval from the trustees of the sick leave bank.
- C. There can be no more than one faculty sick leave bank per institution.
 - 1. To form a sick leave bank, a minimum of 20 employees who are eligible to participate in the bank must petition the president designee of the institution to authorize and direct the establishment of the bank.

- a. The petition shall include a declaration that each petitioner intends to participate.

X. Eligibility

- A. Participation in the Faculty Sick Leave Bank will be available to regular full-time employees who hold faculty rank, whether serving in an academic or fiscal year appointment.
- B. Employees previously enrolled in the Staff Sick Leave Bank who are appointed to faculty positions with no breaks in service shall be eligible immediately for membership in the Faculty Sick Leave Bank with no additional assessment or waiting period required. Regarding transfers, no hours will be transferred between Staff and Faculty Sick Leave Banks.
- C. In addition, Members who are terminated and rehired with a break in service within a twelve (12) month period, following their enrollment shall be entitled to membership with no additional assessment. Employees rehired after one enrollment year will incur a new assessment during the annual enrollment period.
- D. A faculty member who transfers with no break in service from another TBR institution, the University of Tennessee, or state agency, and participated in the previous employer's sick leave bank is immediately eligible for membership in accordance with the receiving institution's sick leave bank plan. If the institutional sick leave bank plan allows, and if membership is requested at the time of the transfer, the faculty member shall donate the required minimum assessment.
- E. Employees who are unable to meet additional assessments charged by the Faculty Sick Leave Bank shall lose the right to request bank sick leave, in accordance with Section V.A.9.
- F. All records regarding prior usage of bank sick leave may be made available to the Faculty Sick Leave Bank trustees.

XI. Trustees

- A. The president or designee of the institution will appoint five (5) sick leave bank trustees upon receipt of the petition.
 - 1. At least three (3) of the appointees shall be faculty who devote a majority of their time to classroom instruction.
 - 2. The remaining trustees may be members of the institution's administrative staff.
- B. Initially, two (2) of the trustees will be appointed for one (1) year, two (2) trustees for two (2) years, and one (1) trustee for three (3) years.
 - 1. Trustees shall be eligible for reappointment.
 - 2. Any vacancy resulting from expiration of a term, discontinuation of employment, retirement, death, resignation, or removal by the president or designee of a trustee from the trustee role shall be filled immediately by appointment by the president or designee of the institution.
 - 3. All actions by the trustees shall require three (3) affirmative votes.
- C. The trustees shall:
 - 1. Meet and elect a chairperson from the trustees.
 - 2. In coordination with Human Resources, be responsible for preparation of the sick leave bank plan of operation. The plan is subject to the president's or designee's review to ensure its compliance with these guidelines, board policy, institution or appropriate recordkeeping and accounting principles, and statutory provisions.
 - 3. In coordination with Human Resources, administer the bank and approve or reject requests for withdrawal of leave from the bank. The request for bank sick leave must be submitted to the trustees. The institutional sick leave bank plan of operation may allow the bank member's supervisor to be informed of any request for bank leave, prior to approval by the trustees.
 - 4. Adopt reasonable rules for the assessment and/or reassessment of sick leave hours by participants in order to maintain an adequate reserve of

usable days for bank members. This reserve shall only be established through the assessment and/or reassessment of bank membership and shall maintain a positive balance at all times. Any assessments shall be based upon total membership and projected potential need. All members shall be assessed the same amount of sick leave hours upon initial assessment and during any special reassessment. The trustees shall have sole discretion in determining how many assessments and/or reassessments are necessary to maintain the reserve's positive balance.

5. Keep all related information confidential.

XII. Sick Leave Bank Plan

- A. The plan of operation prepared by the trustees shall include but not be limited to the following provisions:

1. An employee must have been a member of the bank for thirty (30) calendar days prior to applying for withdrawal of sick leave bank hours.
2. An employee must exhaust all accumulated sick leave and annual leave, if applicable, prior to receiving bank sick leave.
3. Bank sick leave shall not be used for: elective surgery, illness or death of any member of the individual's family, except the illness of a minor child, or during any period when the individual is receiving disability benefits from social security, a state-sponsored retirement plan or Board of Claims benefits. Approved bank sick leave will run concurrently with FMLA leave for an eligible employee who has not already exhausted the twelve (12) workweek entitlement.
4. A restriction may be established on the number of hours that may be withdrawn by an individual bank member on account of an illness known at the time they elected to join the bank.
5. Initial grants of bank sick leave to individual bank members shall not exceed the hourly equivalent of twenty (20) consecutive days for which the applicant

would have otherwise lost pay. Subsequent grants of bank sick leave shall not exceed the hourly equivalents of sixty (60) days in any fiscal year, or ninety (90) days for any one illness, or recurring diagnosed illness, or accident.

6. A member is limited up to a maximum of ninety (90) days from the sick leave bank as a result of a personal illness, injury, accident, disability, medical condition, quarantine or a condition related to, resulting from, or recurring from a previously diagnosed condition for which the bank granted sick leave. Grants from the sick leave bank shall not exceed ninety (90) days within a twelve (12) month period. The initial twelve (12) month period starts on the date the member's sick leave grants first begin and extends twelve (12) months forward from that date. A new twelve (12) month period would begin the first time sick bank grants begin again after completion of the previous twelve (12) month period. Grants from the sick leave bank terminate as of the date the member is released to return to work with or without restrictions.
 - a. The institution's sick leave bank plan of operation may impose a lifetime maximum of sick leave bank grants.
 - b. A bank member may be eligible to receive sick leave that has been donated by other employees if s/he has made application for bank sick leave and the necessity for bank leave is substantiated by the trustees. Should bank sick leave be denied, the bank member shall be eligible to receive donations from other employees as provided in TBR Policy 5.01.01.15 - Transfer of Sick Leave Between Employees.
7. When a bank member is physically or mentally unable to apply for bank sick leave, the immediate next-of-kin may make a request for bank sick leave on their behalf. If there is no next-of-kin available, this request may be made by the legally appointed guardian or conservator or an individual acting under valid power of attorney.

8. At any time, the trustees may request from a bank member a physician's statement certifying the illness or condition of the bank member requesting leave. Refusal to submit the certification will result in denial of the request for bank sick leave. The institution's sick leave bank plan of operation may require all members to submit supporting documentation when requesting bank sick leave.
9. A bank member shall lose the right to request bank sick leave upon termination of employment, retirement, cancelation of bank membership, refusal or inability to honor the trustee's assessments, and going on leave of absence (in a non-pay status) for reasons other than illness, injury, or disability.
10. A bank member may cancel their membership at any time upon written notification to the trustees. Assessed sick leave days shall be nonrefundable upon cancelation of membership and nontransferable upon transfer to another TBR institution, UT or State agency.
11. Employees who are granted bank sick leave shall continue to accrue sick leave and annual leave, if applicable, and service credit for retirement and longevity purposes, during the time they are on bank sick leave. Also, they will receive credit for any holidays that may occur during the bank sick leave period.
12. Grants of bank sick leave shall not be contingent upon repayment of hours used or waiver of other employment benefits or rights.
13. The trustees will meet either in person, by email, or by conference call, to approve or reject all requests for bank sick leave within ten (10) calendar days of receipt of the request. The number of calendar days to approve or reject sick leave bank requests will be established by the institution's sick leave bank plan of operation. The operation of the Faculty Sick Leave Bank shall exist separately from the regular sick leave accrued to individuals'

personal accounts with respect to approvals and appeals; the decisions of the trustees shall not be appealed beyond that body.

14. All records and official forms of the sick leave bank and minutes of the trustee meetings shall be maintained in the institution's human resources office, or in the appropriate office as determined by the president of the college of applied technology. All records shall be subject to audit by appropriate state officials.
15. An annual enrollment period shall be established by the trustees. The initial enrollment period shall last for a minimum of forty-five (45) calendar days from the date that eligible employees are notified of the bank's establishment. Subsequent annual enrollment periods shall not exceed one (1) calendar month. The trustees or designee shall notify all eligible employees of their eligibility status and the dates of the enrollment period. Enrollment forms and copies of the plan and its regulations shall be made available at this time also.
16. All eligible persons who elect to participate in the Faculty Sick Leave Bank shall be assessed a number of sick leave hours by the trustees—up to maximum hourly equivalent of three (3) days (22.5)—as the initial enrollment assessment.
17. The following official forms, as Exhibits, will be used to operate the sick leave bank:
 - a. Official Sick Leave Bank Election Form (Petition): Exhibit 1
 - b. Enrollment Form: Exhibit 2
 - c. Request for Bank Sick Leave: Exhibit 3
 - d. Notice to Sick Leave Bank Member of Assessment of Sick Leave Days: Exhibit 4
18. Formal minutes shall be made of the sick leave bank trustees' meetings and shall be maintained as a part of the official bank records.

XIII. [Schedule Requirements](#)

- A. The following time schedule shall be followed in establishing the sick leave bank, and addressed within the institutional sick leave bank plan of operation:
1. Petition Received by the President or designee:
 - a. Within thirty (30) calendar days of receipt of the petition, the president or designee shall appoint the trustees.
 2. Trustees Responsibilities
 - a. Within ten (10) calendar days of appointment, the trustees shall hold their first meeting and elect a chairperson.
 - b. Within sixty (60) calendar days before the effective date of the sick leave bank, the trustees shall notify all eligible employees of the establishment of the bank and its date of effectiveness.
 3. Effective Date
 - a. The president or designee, upon approval of the trustees' plan of operation, shall determine the date on which the sick leave bank becomes effective.
 - b. This date shall be no later than one hundred eighty (180) calendar days after the date of receipt of the original petition.

XIV. [Dissolution of the Bank](#)

- A. The sick leave bank shall be dissolved if the institution is closed or if the bank membership falls below twenty (20) individuals.
- B. The total hours on deposit shall be returned to the participating members at the time of the dissolution and credited to their personal sick leave accumulation in proportion to the number of hours each has been assessed.

Exhibits

- [Configure](#)



[Exhibit 1 - Faculty Sick Leave Bank Election Form](#) (pdf /46.38 KB)

-  [Exhibit 2 - Faculty Sick Leave Bank Enrollment Form](#) (pdf /45.02 KB)
-  [Exhibit 3 - Faculty Sick Leave Bank Notice of Assessment](#) (pdf /36.95 KB)
-  [Exhibit 4 - Faculty Sick Leave Bank Request Form](#) (pdf /40.84 KB)

Sources

Authority

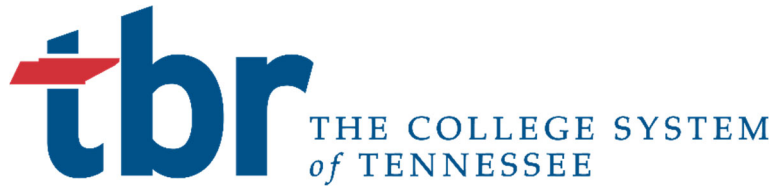
T.C.A. §§ 49-8-203; 8-50-925

History

November 1, 1988, Presidents Meeting; August 15, 1989, Presidents Meeting; November 12, 1996, Presidents Meeting; November 6, 2002, Presidents Meeting; February 2, 2016, Presidents Meeting; Presidents Meeting May 3, 2023 (effective July 1, 2023).

Related Policies

- [Employment Classification](#)
- [Transfer of Sick Leave Between Employees](#)



**Presidents Quarterly Meeting
May 3, 2023**

SUBJECT: TBR Guideline P-061, Formation & Operation of Staff Sick Leave Banks (Revisions)

PRESENTER: Brian Lapps

ACTION REQUIRED: Requires Vote

Summary:

New legislation effective July 1, 2023, adds the illness of a minor child to the qualifying events for which sick bank leave may be used. The revisions to the attached guidelines accomplish that revision. The Human Resources Officers will need to have discussions during the next policy cycle to decide whether to recommend changes to TBR Policy 5.01.01.15, Transfer of Sick Leave Between Employees.

Formation & Operation of Staff Sick Leave Bank: P-061

Guideline Area

Personnel Guidelines

Applicable Divisions

TCATs, Community Colleges, System Office

Purpose

The purpose of this guideline is to establish the procedure for the formation and operation of Staff Sick Leave Banks at institutions or the System Office governed by the Tennessee Board of Regents.

Guideline

I. Authorization

- A. Pursuant to T.C.A. § 8-50-926, the following guideline shall be followed in the formation and operation of sick leave banks at all institutions or the System Office governed by the Tennessee Board of Regents-~~System~~.
 1. This guideline will be implemented in accordance with TBR Policy 5:01:01:00 - Employment~~mentee~~ Classification.
 2. For purposes of this ~~guidelinepolicy~~, the term institution shall include the System Office.

II. Establishment

- A. A sick leave bank is established when a group of employees agree to be assessed a specified number of accrued sick leave hours for a common pool.
 1. Such assessment of sick leave shall be deducted from the individual's personal accumulated sick leave and shall be nonrefundable.
- B. From this pool, the members may withdraw an amount of hours greater than their individual assessments upon request to and approval from the trustees of the sick leave bank.
- C. There can be no more than one Staff Sick Leave Bank per institution.

1. To form a sick leave bank, a minimum of twenty (20) employees who are eligible to participate in the bank must petition the president/chancellor or designee, as appropriate, of the institution to authorize and direct the establishment of the bank.
 - a. The petition shall include a declaration that each petitioner intends to participate.

III. Eligibility

- A. Participation in the Staff Sick Leave Bank will be available to regular full-time and regular part-time staff, exempt and non-exempt employees whether serving in an academic, fiscal or modified fiscal year appointment (MODFY).
- B. Employees previously enrolled in the Faculty Sick Leave Bank who are appointed to a staff position with no breaks in service shall be eligible immediately to transfer membership to the Staff Sick Leave Bank with no additional assessment or waiting period required. Regarding transfers, no hours will be transferred between the Faculty and Staff Sick Leave Banks.
- C. Members who are terminated and rehired with a break in service within a twelve (12) month period following their enrollment shall be entitled to membership with no additional assessment. Employees rehired after one enrollment year will incur a new enrollment assessment during the annual enrollment period.
- D. An employee who transfers with no break in service from another TBR institution, the University of Tennessee, or state agency, and participated in the previous employer's sick leave bank is immediately eligible for membership in accordance with the receiving institution's sick leave bank plan. If the institution's sick leave bank plan allows, and if membership is requested at the time of the transfer, the member shall donate the required minimum assessment.
- E. Employees who are unable to meet additional assessments charged by the Staff Sick Leave Bank, shall lose the right to request bank sick leave, in accordance with Section V.A. ~~912~~.

- F. All records regarding prior usage of bank sick leave may be made available to the Staff Sick Leave Bank trustees.

IV. Trustees

- A. The president/chancellor or designee of the institution will appoint five (5) sick leave bank trustees upon receipt of the petition.
 - 1. At least three (3) of the appointees shall be clerical and support staff.
- B. Initially, two (2) of the trustees will be appointed for one (1) year, two (2) trustees for two (2) years, and one (1) trustee for three (3) years.
 - 1. Trustees shall be eligible for reappointment.
 - 2. Any vacancy resulting from expiration of a term, discontinuation of employment, retirement, death, resignation, or removal by the president/chancellor or designee of a trustee from the trustee role shall be filled immediately by appointment by the president/chancellor or designee of the institution.
 - 3. All actions by the trustees shall require three (3) affirmative votes.
- C. The trustees shall:
 - 1. Meet and elect a chairperson from the trustees.
 - 2. In coordination with Human Resources, be responsible for preparation of the sick leave bank plan of operation. The plan is subject to the president's/chancellor's or designee's review to ensure its compliance with these guidelines, board policy, institution policy, appropriate recordkeeping and accounting principles, and statutory provisions.
 - 3. In coordination with Human Resources, administer the bank and approve or reject requests for withdrawal of leave from the bank. The request for bank sick leave must be submitted to the trustees. The institutional sick leave bank plan of operation may require the member's supervisor be informed of any request for bank leave, prior to approval by the trustees.

4. Adopt reasonable rules for the assessment and/or reassessment of sick leave hours by participants in order to maintain an adequate reserve of usable days for bank members. This reserve shall only be established through the assessment and/or reassessment of bank membership and shall maintain a positive balance at all times. Any assessments shall be based upon total membership and projected potential need. All members shall be assessed the same amount of sick leave hours upon initial assessment and during any special reassessment. The trustees shall have sole discretion in determining how many assessments and/or reassessments are necessary to maintain the reserve's positive balance.
5. Keep all related information confidential.

V. **Sick Leave Bank Plan**

- A. The plan of operation prepared by the trustees shall include but not be limited to the following provisions.
 1. An employee must have been a member of the bank for thirty (30) calendar days prior to applying for withdrawal of sick leave bank hours.
 2. An employee must exhaust all accumulated sick leave and annual leave, if applicable, prior to receiving bank sick leave.
 3. Bank sick leave shall not be used for: elective surgery, illness or death of any member of the individual's family, except the illness of a minor child, -or during any period when the individual is receiving disability benefits from social security, a state-sponsored retirement plan or Board of Claims benefits. Approved bank sick leave will run concurrently with FMLA leave for an eligible employee who has not already exhausted the twelve (12) workweek entitlement.
 4. A restriction may be established on the number of hours that may be withdrawn by an individual bank member on account of an illness, known at the time he or she elected to join the bank.

5. Initial grants of bank sick leave to individual bank members shall not exceed the hourly equivalent of twenty (20) consecutive days for which the applicant would have otherwise lost pay. Subsequent grants of bank sick leave shall not exceed the hourly equivalents of sixty (60) days in any fiscal year, or up to a maximum of ninety (90) days for any one illness, or recurring diagnosed illness, or accident.
6. A member is limited to a maximum of ninety (90) days from the sick leave bank as the result of any one personal illness, injury, accident, disability, medical condition, quarantine or a condition related to, resulting from, or recurring from a previously diagnosed condition for which the bank granted sick leave. Grants from the sick leave bank shall not exceed ninety (90) days within a twelve (12) month period. The initial twelve (12) month period starts on the date the member's sick leave grants first begin and extends twelve (12) months forward from that date. A new twelve (12) month period would begin the first time sick bank grants begin again after completion of the previous twelve (12) month period. Grants from the sick leave bank terminate as of the date the member is released to return to work with or without restrictions.

a. The institution's sick leave bank plan of operation may impose a lifetime maximum of sick leave bank grants.

b. A bank member may be eligible to receive sick leave that has been donated by other employees if s/he has made application for bank sick leave and the necessity for bank leave is substantiated by the trustees. Should bank sick leave be denied, the bank member shall be eligible to receive donations from other employees as provided in TBR Policy 5.01.01.15 - Transfer of Sick Leave Between Employees.

7. When a bank member is physically or mentally unable to apply for bank sick leave, the immediate next-of-kin may make a request for bank sick leave on his or her behalf. If there is no next-of-kin available, this request may be made by the legally appointed guardian or conservator or an individual acting under valid power of attorney.
8. At any time the trustees may request from a bank member a physician's statement certifying the illness or condition of the bank member requesting leave. Refusal to submit the certification will result in denial of the request for bank sick leave. The institution's sick leave bank plan of operation may require all members to submit supporting documentation when requesting bank sick leave.
9. A bank member shall lose the right to request bank sick leave upon termination of employment, retirement, cancelation of bank membership, refusal or inability to honor the trustee's assessments, and going on leave of absence (in a non-pay status) for reasons other than illness, injury, or disability.
10. A bank member may cancel his or her membership at any time upon written notification to the trustees. Assessed sick leave days shall be nonrefundable upon cancelation of membership and nontransferable upon transfer to another TBR institution, UT or State agency.
11. Employees who are granted bank sick leave shall continue to accrue sick leave and annual leave, if applicable, and service credit for retirement and longevity purposes, during the time they are on bank sick leave. Also, they will receive credit for any holidays that may occur during the bank sick leave period.
12. Grants of bank sick leave shall not be contingent upon repayment of hours used or waiver of other employment benefits or rights.

13. The trustees will meet either in person, by email, or by conference call, to approve or reject all requests for bank sick leave within ten (10) calendar days of receipt of the request. The number of calendar days to approve or reject sick leave bank requests will be established by the institution's sick leave bank plan of operation, ~~unless otherwise specified in the sick bank plan of operation~~. The operation of the Staff Sick Leave Bank shall exist separately from the regular sick leave accrued to individuals' personal accounts with respect to approvals and appeals. The decisions of the trustees shall not be appealed beyond that body.
14. All records and official forms of the sick leave bank and minutes of the trustee meetings shall be maintained in the institution's human resources office or, in the appropriate office as determined by the president of the college of applied technology. All records shall be subject to audit by appropriate state officials.
15. An annual enrollment period shall be established by the trustees. The initial enrollment period shall last for a minimum of forty-five (45) calendar days from the date that eligible employees are notified of the bank's establishment. Subsequent annual enrollment periods shall not exceed one (1) calendar month. The trustees or designee shall notify all eligible employees of their eligibility status and the dates of the enrollment period. Enrollment forms and copies of the plan and its regulations shall be made available at this time also.
16. All eligible persons who elect to participate in the Staff Sick Leave Bank shall be assessed a number of sick leave hours determined by the trustees—up to maximum hourly equivalent of three (3) days (22.5)—as the initial enrollment assessment.
17. The following official forms, as Exhibits, will be used to operate the sick leave bank:
 - a. Official Sick Leave Bank Election Form (Petition): Exhibit 1

- b. Enrollment Form: Exhibit 2
 - c. Request for Bank Sick Leave: Exhibit 3
 - d. Notice to Sick Leave Bank Member of Assessment of Sick Leave Days:
Exhibit 4
18. Formal minutes shall be made of the sick leave bank trustees meetings and shall be maintained as a part of the official bank records.

VI. **Schedule Requirements**

- A. The following time schedule shall be followed in establishing the sick leave bank, and addressed within the sick leave bank plan of operation:
- 1. Petition Received by the president/chancellor or designee:
 - a. Within thirty (30) calendar days of receipt of the petition, the president/chancellor or designee shall appoint the trustees.
 - 2. Trustees Responsibilities
 - a. Within ten (10) calendar days of appointment, the trustees shall hold their first meeting and elect a chairperson.
 - b. Within sixty (60) calendar days before the effective date of the sick leave bank, the trustees shall notify all eligible employees of the establishment of the bank and its date of effectiveness.
 - 3. Effective Date
 - a. The president/director/chancellor or designee, upon approval of the trustees' plan of operation, shall determine the date on which the sick leave bank becomes effective.
 - b. This date shall be no later than 180 calendar days after the date of receipt of the original petition.

VII. **Dissolution of the Bank**

- A. The sick leave bank shall be dissolved if the institution is closed or if the bank membership falls below twenty (20) individuals.

- B. The total hours on deposit shall be returned to the participating members at the time of the dissolution and credited to their personal sick leave accumulation in proportion to the number of hours each has been assessed.

Exhibits

- [Configure](#)



[Exhibit 1 - Staff Sick Leave Bank Election Form](#) (pdf /46.96 KB)



- [Exhibit 2 - Staff Sick Leave Bank Enrollment Form](#) (pdf /48.65 KB)



- [Exhibit 3 - Staff Sick Leave Bank Notice of Assessment](#) (pdf /40.08 KB)



- [Exhibit 4 - Staff Sick Leave Bank Request Form](#) (pdf /41.71 KB)

Sources

Authority

T.C.A. §§ 49-8-203; 8-50-926

History

Presidents Meeting: November 1, 1988; August 15, 1989; November 12, 1996; November 6, 2002; February 13, 2008; Presidents Meeting February 2, 2016; [Presidents Meeting May 3, 2023 \(effective July 1, 2023\)](#).

Related Policies

- [Employment Classification](#)
- [Transfer of Sick Leave Between Employees](#)

Formation & Operation of Staff Sick Leave Bank: P-061

Guideline Area

Personnel Guidelines

Applicable Divisions

TCATs, Community Colleges, System Office

Purpose

The purpose of this guideline is to establish the procedure for the formation and operation of Staff Sick Leave Banks at institutions or the System Office governed by the Tennessee Board of Regents.

Guideline

VIII. Authorization

- A. Pursuant to T.C.A. § 8-50-926, the following guideline shall be followed in the formation and operation of sick leave banks at all institutions or the System Office governed by the Tennessee Board of Regents.
 - 1. This guideline will be implemented in accordance with TBR Policy 5.01.01.00 - Employment Classification.
 - 2. For purposes of this guideline, the term institution shall include the System Office.

IX. Establishment

- A. A sick leave bank is established when a group of employees agree to be assessed a specified number of accrued sick leave hours for a common pool.
 - 1. Such assessment of sick leave shall be deducted from the individual's personal accumulated sick leave and shall be nonrefundable.
- B. From this pool, the members may withdraw an amount of hours greater than their individual assessments upon request to and approval from the trustees of the sick leave bank.
- C. There can be no more than one Staff Sick Leave Bank per institution.

1. To form a sick leave bank, a minimum of twenty (20) employees who are eligible to participate in the bank must petition the president/chancellor or designee, as appropriate, of the institution to authorize and direct the establishment of the bank.
 - a. The petition shall include a declaration that each petitioner intends to participate.

X. **Eligibility**

- A. Participation in the Staff Sick Leave Bank will be available to regular full-time and regular part-time staff, exempt and non-exempt employees whether serving in an academic, fiscal or modified fiscal year appointment (MODFY).
- B. Employees previously enrolled in the Faculty Sick Leave Bank who are appointed to a staff position with no breaks in service shall be eligible immediately to transfer membership to the Staff Sick Leave Bank with no additional assessment or waiting period required. Regarding transfers, no hours will be transferred between the Faculty and Staff Sick Leave Banks.
- C. Members who are terminated and rehired with a break in service within a twelve (12) month period following their enrollment shall be entitled to membership with no additional assessment. Employees rehired after one enrollment year will incur a new enrollment assessment during the annual enrollment period.
- D. An employee who transfers with no break in service from another TBR institution, the University of Tennessee, or state agency, and participated in the previous employer's sick leave bank is immediately eligible for membership in accordance with the receiving institution's sick leave bank plan. If the institution's sick leave bank plan allows, and if membership is requested at the time of the transfer, the member shall donate the required minimum assessment.
- E. Employees who are unable to meet additional assessments charged by the Staff Sick Leave Bank, shall lose the right to request bank sick leave, in accordance with Section V.A.9.

- F. All records regarding prior usage of bank sick leave may be made available to the Staff Sick Leave Bank trustees.

XI. Trustees

- A. The president/chancellor or designee of the institution will appoint five (5) sick leave bank trustees upon receipt of the petition.
 - 1. At least three (3) of the appointees shall be clerical and support staff.
- B. Initially, two (2) of the trustees will be appointed for one (1) year, two (2) trustees for two (2) years, and one (1) trustee for three (3) years.
 - 1. Trustees shall be eligible for reappointment.
 - 2. Any vacancy resulting from expiration of a term, discontinuation of employment, retirement, death, resignation, or removal by the president/chancellor or designee of a trustee from the trustee role shall be filled immediately by appointment by the president/chancellor or designee of the institution.
 - 3. All actions by the trustees shall require three (3) affirmative votes.
- C. The trustees shall:
 - 1. Meet and elect a chairperson from the trustees.
 - 2. In coordination with Human Resources, be responsible for preparation of the sick leave bank plan of operation. The plan is subject to the president's/chancellor's or designee's review to ensure its compliance with these guidelines, board policy, institution policy, appropriate recordkeeping and accounting principles, and statutory provisions.
 - 3. In coordination with Human Resources, administer the bank and approve or reject requests for withdrawal of leave from the bank. The request for bank sick leave must be submitted to the trustees. The institutional sick leave bank plan of operation may require the member's supervisor be informed of any request for bank leave, prior to approval by the trustees.

4. Adopt reasonable rules for the assessment and/or reassessment of sick leave hours by participants in order to maintain an adequate reserve of usable days for bank members. This reserve shall only be established through the assessment and/or reassessment of bank membership and shall maintain a positive balance at all times. Any assessments shall be based upon total membership and projected potential need. All members shall be assessed the same amount of sick leave hours upon initial assessment and during any special reassessment. The trustees shall have sole discretion in determining how many assessments and/or reassessments are necessary to maintain the reserve's positive balance.
5. Keep all related information confidential.

XII. Sick Leave Bank Plan

- A. The plan of operation prepared by the trustees shall include but not be limited to the following provisions.
 1. An employee must have been a member of the bank for thirty (30) calendar days prior to applying for withdrawal of sick leave bank hours.
 2. An employee must exhaust all accumulated sick leave and annual leave, if applicable, prior to receiving bank sick leave.
 3. Bank sick leave shall not be used for: elective surgery, illness or death of any member of the individual's family, except the illness of a minor child, or during any period when the individual is receiving disability benefits from social security, a state-sponsored retirement plan or Board of Claims benefits. Approved bank sick leave will run concurrently with FMLA leave for an eligible employee who has not already exhausted the twelve (12) workweek entitlement.
 4. A restriction may be established on the number of hours that may be withdrawn by an individual bank member on account of an illness, known at the time he or she elected to join the bank.

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6. A member is limited to a maximum of ninety (90) days from the sick leave bank as the result of any one personal illness, injury, accident, disability, medical condition, quarantine or a condition related to, resulting from, or recurring from a previously diagnosed condition for which the bank granted sick leave. Grants from the sick leave bank shall not exceed ninety (90) days within a twelve (12) month period. The initial twelve (12) month period starts on the date the member's sick leave grants first begin and extends twelve (12) months forward from that date. A new twelve (12) month period would begin the first time sick bank grants begin again after completion of the previous twelve (12) month period. Grants from the sick leave bank terminate as of the date the member is released to return to work with or without restrictions.
 - a. The institution's sick leave bank plan of operation may impose a lifetime maximum of sick leave bank grants.
 - b. A bank member may be eligible to receive sick leave that has been donated by other employees if s/he has made application for bank sick leave and the necessity for bank leave is substantiated by the trustees. Should bank sick leave be denied, the bank member shall be eligible to receive donations from other employees as provided in TBR Policy 5.01.01.15 - Transfer of Sick Leave Between Employees.

7. When a bank member is physically or mentally unable to apply for bank sick leave, the immediate next-of-kin may make a request for bank sick leave on his or her behalf. If there is no next-of-kin available, this request may be made by the legally appointed guardian or conservator or an individual acting under valid power of attorney.
8. At any time the trustees may request from a bank member a physician's statement certifying the illness or condition of the bank member requesting leave. Refusal to submit the certification will result in denial of the request for bank sick leave. The institution's sick leave bank plan of operation may require all members to submit supporting documentation when requesting bank sick leave.
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10. A bank member may cancel his or her membership at any time upon written notification to the trustees. Assessed sick leave days shall be nonrefundable upon cancelation of membership and nontransferable upon transfer to another TBR institution, UT or State agency.
11. Employees who are granted bank sick leave shall continue to accrue sick leave and annual leave, if applicable, and service credit for retirement and longevity purposes, during the time they are on bank sick leave. Also, they will receive credit for any holidays that may occur during the bank sick leave period.
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13. The trustees will meet either in person, by email, or by conference call, to approve or reject all requests for bank sick leave within ten (10) calendar days of receipt of the request. The number of calendar days to approve or reject sick leave bank requests will be established by the institution's sick leave bank plan of operation. The operation of the Staff Sick Leave Bank shall exist separately from the regular sick leave accrued to individuals' personal accounts with respect to approvals and appeals. The decisions of the trustees shall not be appealed beyond that body.
14. All records and official forms of the sick leave bank and minutes of the trustee meetings shall be maintained in the institution's human resources office or, in the appropriate office as determined by the president of the college of applied technology. All records shall be subject to audit by appropriate state officials.
15. An annual enrollment period shall be established by the trustees. The initial enrollment period shall last for a minimum of forty-five (45) calendar days from the date that eligible employees are notified of the bank's establishment. Subsequent annual enrollment periods shall not exceed one (1) calendar month. The trustees or designee shall notify all eligible employees of their eligibility status and the dates of the enrollment period. Enrollment forms and copies of the plan and its regulations shall be made available at this time also.
16. All eligible persons who elect to participate in the Staff Sick Leave Bank shall be assessed a number of sick leave hours determined by the trustees—up to maximum hourly equivalent of three (3) days (22.5)—as the initial enrollment assessment.
17. The following official forms, as Exhibits, will be used to operate the sick leave bank:
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- c. Request for Bank Sick Leave: Exhibit 3
 - d. Notice to Sick Leave Bank Member of Assessment of Sick Leave Days:
Exhibit 4
- 18. Formal minutes shall be made of the sick leave bank trustees meetings and shall be maintained as a part of the official bank records.

XIII. **Schedule Requirements**

- A. The following time schedule shall be followed in establishing the sick leave bank, and addressed within the sick leave bank plan of operation:
 - 1. Petition Received by the president/chancellor or designee:
 - a. Within thirty (30) calendar days of receipt of the petition, the president/chancellor or designee shall appoint the trustees.
 - 2. Trustees Responsibilities
 - a. Within ten (10) calendar days of appointment, the trustees shall hold their first meeting and elect a chairperson.
 - b. Within sixty (60) calendar days before the effective date of the sick leave bank, the trustees shall notify all eligible employees of the establishment of the bank and its date of effectiveness.
 - 3. Effective Date
 - a. The president/director/chancellor or designee, upon approval of the trustees' plan of operation, shall determine the date on which the sick leave bank becomes effective.
 - b. This date shall be no later than 180 calendar days after the date of receipt of the original petition.

XIV. **Dissolution of the Bank**

- A. The sick leave bank shall be dissolved if the institution is closed or if the bank membership falls below twenty (20) individuals.

- B. The total hours on deposit shall be returned to the participating members at the time of the dissolution and credited to their personal sick leave accumulation in proportion to the number of hours each has been assessed.

Exhibits

- [Configure](#)



[Exhibit 1 - Staff Sick Leave Bank Election Form](#) (pdf /46.96 KB)



- [Exhibit 2 - Staff Sick Leave Bank Enrollment Form](#) (pdf /48.65 KB)



- [Exhibit 3 - Staff Sick Leave Bank Notice of Assessment](#) (pdf /40.08 KB)



- [Exhibit 4 - Staff Sick Leave Bank Request Form](#) (pdf /41.71 KB)

Sources

Authority

T.C.A. §§ 49-8-203; 8-50-926

History

Presidents Meeting: November 1, 1988; August 15, 1989; November 12, 1996; November 6, 2002; February 13, 2008; Presidents Meeting February 2, 2016; Presidents Meeting May 3, 2023 (effective July 1, 2023).

Related Policies

- [Employment Classification](#)
- [Transfer of Sick Leave Between Employees](#)