I. Purpose/Introduction/Rationale

The purpose of this policy is to provide faculty and staff members with a general description of the Family Medical Leave Act (FMLA) and its associated leave rights and benefits. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law. For purposes of this policy "employee" includes both faculty and staff members.

II. Definition

The College will comply with FMLA regulations as revised effective January 16, 2009. This policy is effective immediately and supersedes all versions previously published and distributed.

III. Procedure or Application

A. Eligibility

To qualify to take family or medical leave under this policy, employees must meet all of the following conditions:

1. Employees must have worked for the College for at least twelve (12) months (cumulative). Separate periods of employment will be counted, provided that the break in service does not exceed seven (7) years. Separate periods of employment will be counted if the break in service exceeds seven (7) years due to National Guard or Reserve military service obligations or when there is a written agreement stating the College’s intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.

2. The employee must have worked at least 1,250 hours during the twelve (12) month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave are not counted in determining the 1,250 hours eligibility test for an employee under FMLA.

3. The employee must work in a worksite where fifty (50) or more employees are employed by the College within seventy-five (75) miles of that office or worksite. The distance is to be calculated by using available transportation by the most direct route.

Leave under this policy will be unpaid unless the employee also qualifies for paid leave under one of the College’s other leave policies.
B. Type of Leave Covered
To qualify as FMLA leave under this policy, the employee must be taking leave for one of the six reasons listed below:

1. The birth of a child and in order to care for that child.
2. The placement of a child for adoption or foster care and to care for the newly placed child.
3. To care for a spouse, child or parent with a serious health condition (described below).
4. The serious health condition (described below) of the employee.
   a. An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee’s position.
   b. A serious health condition is defined as a condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.
   c. This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three (3) consecutive days of incapacity with the first visit to the health care provider within seven (7) days of the onset of the incapacity and a second visit within thirty (30) days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.
   d. If an employee takes PTO or qualifies for Salary Continuation for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the College may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

5. Qualifying exigency leave for families of members of the National Guard and Reserves when the covered military member is on active duty or called to active duty in support of a contingency operation.
   a. An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to active military duty or who is already on active duty may take FMLA leave for reasons related to or affected by the family member’s call-up or service. The qualifying exigency must be one (1) of the following:
      i. Short-notice deployment
      ii. Military events and activities
      iii. Child care and school activities
      iv. Financial and legal arrangements
      v. Counseling
      vi. Rest and recuperation
      vii. Post-deployment activities
      viii. Additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave
   b. The leave may commence as soon as the individual receives the call-up notice (son or daughter for this type of leave is defined the same as child for other types of FMLA leave except that the person does not have to be a minor).
6. Military caregiver leave (also known as covered service member leave) to care for an ill or injured service member.
   a. Military caregiver leave is leave taken to care for a spouse, son, daughter, parent or next of kin covered service member with a serious illness or injury incurred in the line of duty on active duty. Next of kin is defined as the closest blood relative of the injured or recovering service member.

C. Amount of Leave
   a. An eligible employee can take up to twelve (12) weeks for the FMLA circumstances (1) through (5) above under this policy during any twelve (12) month period. The College will measure the twelve (12) month period as a rolling twelve (12) month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the College will compute the amount of leave the employee has taken under this policy in the last twelve (12) months and subtract it from the twelve (12) weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.
   b. An eligible employee can take up to twenty (26) weeks for the FMLA circumstance (6) above (military caregiver leave) during a single twelve (12) month period. For this military caregiver leave, the College will measure the twelve (12) month period as a rolling twelve (12) month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of twenty-six (26) weeks available.
   c. If a husband and wife both work for the College and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent “in-law”) with a serious health condition, the husband and wife may only take a combined total of twelve (12) weeks of leave. If a husband and wife both work for the College and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of twenty-six (26) weeks of leave.
   d. At the end of the leave, employees may be entitled to additional leave if the employee and the reason for leave qualify under other College leave policies. However, extension of leave under other College policies may result in the loss of certain benefits covered while on FMLA leave.

D. Employee status & benefits during leave
   1. During the leave the College will maintain the employee’s coverage for their benefits as follows:
      a. Paid Leave - Contributions for all benefit plans will automatically be deducted from employee’s payroll under the same conditions as if the employee had continued to work.
      b. Unpaid Leave - It will be necessary for the employee to continue their portion of their benefits while on leave. While an employee is on leave, the College will continue the employee’s health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. The employee must continue to make this payment, either in person or by mail. The employee may be billed by the Bursar’s office for their share of benefits or the employee may authorize the College to pre-deduct the contributions from their last paycheck(s).

      The payment must be received by the Bursar’s Office by the payday indicated on the biweekly and monthly payroll schedules. If the payment is more than thirty (30) days late, the employee’s health care coverage may be dropped for the duration of the leave. The College will provide fifteen (15) days' notification prior to the employee's loss of coverage.

      2. If an employee on unpaid FMLA leave chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a
circumstance beyond the employee's control, the College will require the employee to reimburse the College the amount it paid for the employee's health insurance premium during the leave period. Reimbursement under such circumstances will be collected from the employee or deducted from monies owed the employee at the time of his/her separation from the College. Employees who do not return because of a serious health condition will be required to provide medical certification from a health care provider.

3. Employees will be notified of any changes in the benefit plan(s) while on leave and will be entitled to participate in the changed plan under the same conditions as if the employee had continued to work. Upon return from leave the employee’s benefit plans will be reinstated with no penalty for pre-existing conditions.

E. Employee status after leave
1. An employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from their health care provider. This requirement will be included in the College’s response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The college may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

2. If you are considered to be a key employee and are not restored to your previous position, your benefits will not be terminated prior to the end of your leave and you will only be responsible for the payment of your portion of the premium contributions. Upon completion of your leave you will be eligible for health insurance continuation under COBRA.

3. Failure to return to work on the first business day following the expiration of the leave will be considered a voluntary termination. If you fail to return to work, your benefits will be terminated and you will forfeit your rights under FMLA to restoration of your previous position. You will be offered continuation of health benefits under the federal COBRA (Consolidated Omnibus Budget Reconciliation Act) and the provisions of the benefit plans under which you were covered.

F. Use of paid and unpaid leave
1. An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member may use PTO to supplement the unpaid portion of their unpaid leave. PTO will run concurrently with FMLA leave if the reason qualifies as an eligible reason under this policy.

2. The College provides eligible employees with salary continuation benefits to cover their absence for the portion of their leave, which is medically necessary for care. Please refer to the College's Salary Continuation Policy for additional information and requirements.

3. The College provides eligible employees a leave of absence with pay for the express purpose of caring for a newly adopted child. Please refer to the College's Parental Leave policies for additional information and requirements.

4. Disability leave for the birth of the child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA.

5. An employee who is using military FMLA leave for a qualifying exigency may use PTO to supplement the unpaid portion of their leave.
G. Intermittent leave or reduced work schedule

1. Under some circumstances, employees may take FMLA leave intermittently - taking leave in separate blocks of time for a single qualifying reason - or on a reduced leave schedule – reducing the employees usual weekly or daily work schedule. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the operation of the College. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks in cases of military caregiver leave).

2. During periods of intermittent FMLA leave, the College may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.

3. If FMLA leave is for birth and care, or placement for adoption or foster care, use of intermittent leave is subject to the College's approval. For the birth, adoption or foster care of a child, the College and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced-hour schedule. Leave for birth, adoption or foster care of a child must be taken within one (1) year of the birth or placement of the child.

4. If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the College before taking intermittent leave or working a reduced-hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

H. Certification for employee’s serious health condition

1. The College will require certification for the employee’s serious health condition. The employee must respond to such a request within fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

2. To Qualify for Unpaid FMLA Leave:
   a. Medical certification will be provided using the Department of Labor’s Certification of Health Care Provider for Employee’s Serious Health Condition Form.

3. To Qualify for FMLA Leave while using the College’s Salary Continuation Benefits:
   a. Medical certification will be provided using the Rollins College Certification of Health Care Provider Form (CHCP).
   b. The College may directly contact the employee’s health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. The college will not use the employee’s direct supervisor for this contact. Before the College makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the College will obtain the employee’s permission for clarification of individually identifiable health information.
   c. The College reserves the right to ask for a second opinion if it has reason to doubt the certification. The College will pay for the employee to get a certification from a second doctor, which the College will select. The College may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the College will require the opinion of a third doctor. The College and the employee will mutually select the third doctor, and the College will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.
I. Certification for family member’s serious health condition
   1. The College will require certification for the family member’s serious health condition. The employee must respond to such a request within fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.
   2. To Qualify for Unpaid FMLA Leave:
      a. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member’s Serious Health Condition Form.
      b. The College’s HR Department or health care professional may directly contact the employee’s family member’s health care provider for verification or clarification purposes. The College will not use the employee’s direct supervisor for this contact. Before the College makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the College will obtain the employee’s family member’s permission for clarification of individually identifiable health information.
      c. The College reserves the right to ask for a second opinion if it has reason to doubt the certification. The College will pay for the employee’s family member to get a certification from a second doctor, which the College will select. The College may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the College will require the opinion of a third doctor. The College and the employee will mutually select the third doctor, and the College will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

J. Certification of qualifying exigency for military family leave
   1. The College will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.
   2. To Qualify for Unpaid FMLA Leave:
      a. Certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave Form.

K. Certification for serious injury or illness of covered service member for military family leave
   1. The College will require certification for the serious injury or illness of the covered service member. The employee must respond to such a request within fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.
   2. To Qualify for Unpaid FMLA Leave:
      a. Certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Service Member Form.
L. Recertification
   1. The College may request recertification for the serious health condition of the employee or the employee’s family member no more frequently than every thirty (30) days and only when circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the College may request recertification for the serious health condition of the employee or the employee’s family member every six (6) months in connection with an FMLA absence. The College may provide the employee’s health care provider with the employee’s attendance records and ask whether need for leave is consistent with the employee’s serious health condition.
   2. Where an employee has requested leave for his/her own serious health condition, the employee is responsible and required to provide medical recertification for the leave extension. This request should be submitted as soon as the need for leave extension is known and at least two (2) weeks before the original leave expires if possible.

M. Procedure for requesting FMLA leave
   1. All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the Human Resources Department. Within five (5) business days after the employee has provided this notice, the Human Resources Department will complete and provide the employee with the DOL Notice of Eligibility and Right & Responsibilities Form.
   2. When the need for the leave is foreseeable, the employee must provide the College with at least thirty (30) days’ notice. When an employee becomes aware of a need for FMLA leave less than thirty (30) days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the College’s usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.
   3. Employees planning a regimen of treatment should consult with their supervisor prior to the scheduling of the treatment to work out a treatment schedule which meets the needs of the employee and the College. If the employee fails to do so, the College reserves the right to require the employee to attempt to reschedule the treatment to better accommodate the employee’s work schedule if medically appropriate.

N. Designation of FMLA leave
   1. Within five (5) business days after the employee has submitted the appropriate certification form, Human Resources will complete and provide the employee with a written response to the employee’s request for FMLA leave using the DOL Designation Notice.

O. Intent to return to work from FMLA leave
   1. On a basis that does not discriminate against employees on FMLA leave; the College may require an employee on FMLA leave to report periodically on the employee’s status and intent to return to work.
   2. Should the employee or a family member recover earlier than the leave requests indicated, employees are expected to return to work as soon as care is no longer required. If the employee is on another type of family leave and wishes to return early, the Human Resource Department must be notified prior to their return.
P. Administration of FMLA leave
   1. The College is the sole administrator of this policy and, as such, is the exclusive interpreter of its terms. All provisions of this policy will be consistent with the Family and Medical Leave Act of 1993 and revisions effective January 16, 2009.
   2. The College reserves the right to amend or change this policy at any time consistent with the rules and regulations of the Medical Leave Act of 1993 and revisions effective January 16, 2009.
   3. This policy does not grant or create any employment rights to any individual other than that which is stated in this policy or subject to interpretation from the Family and Medical Leave Act of 1993 and revisions effective January 16, 2009.

IV. Related Policies or Applicable Publications
   See also: Salary Continuation Policy, Paid Time Off (PTO) – Staff Policy

V. Appendices/Supplemental Materials
   N/A

VI. Rationale for Revision
   N/A