

## Board of Governors Rule

Talent and Culture  
Employee Leave  
Responsible Unit: Talent and Culture  
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Review Date: September 2029

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### **BOG TALENT AND CULTURE RULE 3.5 EMPLOYEE LEAVE**

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#### **SECTION 1: PURPOSE & SCOPE.**

- 1.1 This Rule outlines the guiding principles for annual leave, sick leave, medical leave, funeral leave, catastrophic leave, parental leave, the Family Medical Leave Act (FMLA), personal leave of absence without pay, military leave, special emergency leave without pay, witness and jury leave and leave usage during facility disruption, utility service interruption and inclement weather for Employees of the West Virginia University Board of Governors.

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#### **SECTION 2: GENERAL LEAVE COVERAGE.**

- 2.1 Eligibility for annual and sick leave shall be based on the following:
- 2.1.1 Classified and Non-Classified Employees
    - 2.1.1.1 Classified and Non-Classified Employees working on a regular and continuing basis for at least 1,040 hours over a minimum of nine (9) months within a twelve (12) month period are eligible for leave as specified in this document.
    - 2.1.1.2 Classified and Non-Classified Employees working less than 1,040 hours within a twelve (12) month period are not eligible for leave benefits.

2.1.1.3 Temporary employees are not eligible for paid leave.

2.1.2 Faculty/Faculty Equivalent Academic Professionals (FEAPs) Employees

2.1.2.1 Faculty/FEAP Employees on twelve-month appointments are defined as leave eligible employees and accrue leave according to the appropriate sections of this Rule.

2.1.2.2 Faculty/FEAP Employees on annual appointments of less than twelve (12) months do not accrue annual or sick leave. Thus, they are not eligible to participate in the catastrophic leave program.

**2.2 Leave Accrual.**

2.2.1 All leave eligible employees on payroll as of the 15th of the month earn  $\frac{1}{2}$  of their monthly leave accruals.

2.2.2 All leave eligible employees on payroll as of the last day of the month earn  $\frac{1}{2}$  of their monthly leave accruals.

2.2.3 During a Terminal Leave Period, no type of leave may be accrued.

2.2.4 Leave eligible employees on leave of absence without pay shall not accrue annual or sick leave or years of service credit for any and all full months in which they are off the payroll.

2.2.5 The University shall keep on file a record showing the current leave status of each leave eligible employee.

2.2.6 Regardless of the type of leave or absence, leave eligible employees whose leave or absence qualifies under FMLA shall accrue leave if the leave period is covered by sick or annual leave.

**2.3 Leave Usage.**

2.3.1 Annual and sick leave may not be taken before it is accrued.

2.3.2 A recognized institutional holiday occurring during a leave eligible employee's leave period shall not be considered as a day of leave, provided the leave eligible employee is not in a terminal leave period.

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**SECTION 3. ANNUAL LEAVE.****3.1 Leave Accrual.****3.1.1 Classified Employees.**

- 3.1.1.1 Leave eligible Classified Employees occupying 1.0 FTE positions shall be eligible for annual leave on the following basis: Less than 5 years' service: 1.25 days per month; 5 but less than 10 years' service: 1.50 days per month; 10 but less than 15 years' service: 1.75 days per month; 15 or more years' service: 2.00 days per month.
- 3.1.1.2 Leave eligible Classified Employees expected to work at least 1,040 hours over a minimum of nine (9) months within a twelve (12) month period on a regular and continuing basis, but less than 1,950 hours over a 12-month period shall accumulate annual leave on a pro-rata basis.
- 3.1.1.3 Length of service shall be total years of service to the state of West Virginia including experience with WV state institutions of higher education and other state agencies.
  - 3.1.1.3.1 Annual appointment periods of nine (9) months at 1.0 FTE or more shall be credited for one (1) year of service for annual leave calculation purposes.
  - 3.1.1.3.2 Years of service shall be prorated for all Classified Employees with appointments of less than 1.0 FTE.

**3.1.2 Faculty/FEAP Employees.**

- 3.1.2.1 Leave eligible Faculty/FEAP Employees occupying 1.0 FTE positions shall be eligible for 2.00 days per month of annual leave.
- 3.1.2.2 Leave eligible Faculty/FEAP Employees occupying positions which are less than 1.0 FTE shall accumulate annual leave on a pro-rata basis.

**3.1.3 Non-Classified Employees.**

- 3.1.3.1 Non-Classified Employees occupying 1.0 FTE positions shall be eligible for 2.00 days per month of annual leave.
- 3.1.3.2 Non-Classified Employees expected to work at least 1,040 hours over

a minimum of nine (9) months within a twelve (12) month period on a regular and continuing basis, but less than 1,950 hours over a 12-month period hours shall accumulate annual leave on a pro-rata basis.

### **3.2 Annual Leave Usage.**

3.2.1 The work requirements of the institution shall take priority over the scheduling of annual leave or other leave for a leave eligible employee. When operationally possible, the supervisor shall grant earned annual leave at the convenience of the leave eligible employee. However, departmental needs must be met, and annual leave should not be taken without prior request and approval of the leave eligible employee's supervisor.

3.2.1.1 If a leave eligible employee does not follow the established procedures for requesting leave, the charge to annual leave shall be processed as an unauthorized leave.

3.2.2 After all sick leave is exhausted, at the request of the leave eligible employee, accumulated annual leave shall be granted because of illness.

### **3.3 Annual Leave Accrual Maximums.**

3.3.1 The maximum for accumulated annual leave shall be twelve (12) times the leave eligible employee's monthly accrual.

3.3.2 The maximum for accumulated annual leave may be increased up to twenty-four (24) times the leave eligible employee's monthly accrual upon approval by Talent and Culture. Such extension of the leave eligible employee's maximum accrual may not be extended beyond one (1) year.

3.4 Up to fifteen (15) days of unused/unpaid annual leave may be transferred from other eligible agencies of WV state government and state higher education institutions to other higher education institutions. Certification of the balance which existed in the agency or institution from which the leave eligible employee is transferring must accompany the request for transfer and bear the signature of an officer of that agency. A request for transfer must be made within one (1) year from the last day of employment with the other agency or institution.

3.5 A leave eligible employee is entitled to be paid for unused/unpaid annual leave at termination of service, but in no case may this exceed the limits set in 3.3.2 above. The leave eligible employee may elect a lump-sum payout of annual leave, choose to remain on payroll in a terminal leave period equaling the number of annual leave days they have accumulated or transfer unused/unpaid annual leave to another eligible state agency.

3.5.1 In the event of a leave eligible employee's death, the value of accumulated annual

leave will be paid to the leave eligible employee's estate.

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#### **SECTION 4: SICK LEAVE.**

##### **4.1 Sick Leave Accrual.**

- 4.1.1 Leave eligible employees occupying 1.0 FTE positions shall accumulate sick leave at the rate of 1.5 days per month.
- 4.1.2 Leave eligible employees occupying positions which are less than 1.0 FTE shall accumulate sick leave on a pro-rata basis.
- 4.1.3 Sick leave may be accumulated without limit.

##### **4.2 Sick Leave Usage.**

- 4.2.1 Sick leave may be used by the leave eligible employee when ill or injured or when in need of medical attention or when death occurs in the immediate family per Section 6 of this Rule.
- 4.2.2 A leave eligible employee may use sick leave for a member of the immediate family who is ill, injured, or in need of medical attention. Immediate family for this purpose is defined as: father, mother, son, daughter, brother, sister, husband, wife, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandmother, grandfather, granddaughter, grandson, stepmother, stepfather, stepchildren, or others considered to be members of the household and living under the same roof.
- 4.2.3 A leave eligible employee is required to notify their supervisor prior to the beginning of their shift (unless not feasible due to hospitalization, etc.) or immediately if the leave eligible employee becomes ill or unable to work for any reason while at work and to follow the institution's established procedures for absences from work. The notification shall be given to the immediate supervisor or designee, as determined by established procedures of the institution.

##### **4.2.4 Medical Documentation.**

- 4.2.4.1 The institution may require evidence from a leave eligible employee for verification of an illness or other causes for which leave may be granted under this Rule, regardless of the duration of the leave. Such verification shall be provided to Talent and Culture. Documentation regarding a leave eligible employee's medical condition(s) is not required to be submitted to the leave eligible employee's department.

- 4.2.4.2 Sick leave for more than five (5) consecutive days shall not be granted to a

leave eligible employee for illness without satisfactory proof of illness or injury, as evidenced by a statement of the attending physician or by other proof satisfactory to the institution.

- 4.2.4.3 A leave eligible employee having an extended illness or serious injury shall, before returning to duty, obtain satisfactory medical clearance to help ensure adequate protection and shall indicate the leave eligible employee's ability to perform their duties. Such medical clearance shall be presented in writing within the requested timeframes.
- 4.3 In cases, except those involving catastrophic sick leave as defined in Section 7.1.1, where all accumulated sick leave has been used and annual leave is available, it shall be the option of a leave eligible employee either to use any accumulated annual leave until it has also expired, rather than being removed from the payroll, or to retain the accumulated annual leave for use after return to work, but be taken off the payroll immediately after the accumulated sick leave has expired.
- 4.4 Sick leave provisions are contingent upon continued employment. When the services of a leave eligible employee have terminated, all sick leave credited to the leave eligible employee shall be considered cancelled as of the last working day with the institution, and no reimbursement shall be provided for unused sick leave except in the event of retirement, in which case sick leave may be converted to insurance coverage based on the leave eligible employee's eligibility for this benefit or for provisions lawfully provided for at that time. Leave eligible employees who resign in good standing and are later reemployed may have their total accumulated sick leave reinstated, provided the date of termination is one (1) year or less from the date of reemployment. However, if the leave eligible employee returns to work after more than one (1) year from the date of termination, no more than thirty (30) days of accumulated sick leave may be reinstated.

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## **SECTION 5: MEDICAL LEAVE.**

- 5.1 Any employee requesting a medical leave must provide Talent and Culture, through established procedures, with satisfactory medical evidence (such as a statement from the attending physician) that they are unable to work. The medical statement shall include a diagnosis, prognosis, and expected date that the employee can return to work. If the evidence is satisfactory, Talent and Culture may authorize a medical leave only for the period of disability specified by the attending physician.
- 5.2 Medical Leave shall be with pay for all time that can be covered by use of sick leave, annual leave and/or catastrophic leave (as contained in Section 7 of this Rule). Medical Leave without pay may be granted when all available leave has been exhausted.
- 5.3 The employee shall be expected to report to work on the first workday following the expiration of the disability period. An employee, prior to return to duty, shall obtain satisfactory medical

clearance to help ensure adequate protection and which shall indicate the employee's ability to perform their duties. Such medical clearance shall be presented in writing to Talent and Culture. The employee will not be permitted to return to work until authorized by Talent and Culture.

- 5.3.1 Failure of the employee to report promptly at the expiration of a medical leave of absence without pay, except for satisfactory reasons submitted in advance, shall be considered to have resigned from their position.
- 5.4 The University shall grant medical leave(s) in accordance with the FMLA, ADA, and other relevant law.
- 5.5 An employee who is separated from employment following a medical leave of absence of twelve (12) consecutive months may elect group health insurance coverage through COBRA. If such coverage is elected, the former employee is responsible for the full employee portion of the premium cost of such coverage.
- 5.6 Any employee who is separated from employment following a medical leave of absence of twelve (12) consecutive months and who had chosen to maintain their accumulated annual leave will receive payment for such accumulated annual leave in a lump sum payment.
- 5.7 On-the-job injuries or occupational illnesses which involve no more than three (3) days of disability leave or absence from work shall not be charged against a leave eligible employee's accumulated sick leave as long as they are the next three (3) consecutive working days after injury or illness occurred. If on-the-job injuries or illnesses require a leave beyond the three-day period, it shall be the option of a leave eligible employee either to use earned and accumulated sick and annual leave until both may be exhausted or to reserve for future use any earned and accumulated sick and annual leave and receive only Workers' Compensation benefits for which adjudged eligible. Once the leave eligible employee has elected one of the above-described options in writing that decision is final.
- 5.8 Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom shall be, for all job-related purposes, handled on a case-by-case basis. Leave eligible employees shall be entitled to sick leave for their disabilities related to pregnancy and childbirth on the same terms and conditions as they or other leave eligible employees would be entitled for other illnesses and disabilities. In determining whether an employee is unable to work because of a disability related to pregnancy or childbirth, the same criteria shall be used as would be used in the case of another type of illness or disability.

**SECTION 6: FUNERAL LEAVE.**

- 6.1 Funeral leave is intended to provide a leave eligible employee time to arrange for and attend the funeral and related services of an immediate family member, including travel time.
- 6.1.1 Immediate family is defined for this purpose as: parents, siblings or children by blood or law; spouse; grandparents and grandchildren; or others considered to be part of the household living under the same roof.
- 6.1.2 Up to five (5) days of funeral leave may be charged as sick leave. Additional time necessary to meet the obligations outlined above shall be charged as annual leave.
- 6.2 Funeral leave is not provided for estate legal obligations and/or an extended bereavement period. Annual leave may be requested for these purposes.
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**SECTION 7: CATASTROPHIC LEAVE.**

- 7.1 The catastrophic leave program is available to provide salary continuation to leave eligible employees who have suffered a catastrophic illness or injury.
- 7.1.1 Catastrophic illness or injury is defined as: a medically verified illness or injury that is expected to incapacitate the leave eligible employee and create a financial hardship because the leave eligible employee has exhausted all sick and annual leave and other paid time off.
- 7.1.2 Catastrophic illness or injury also includes an incapacitated immediate family member as defined in Section 4.2.2 above, as appropriate, if this results in the leave eligible employee being required to take time off from work for an extended period of time to care for the family member and if the leave eligible employee has exhausted all sick and annual leave and other paid time off.
- 7.2 In order to participate in the catastrophic leave program, a leave eligible employee must complete an application, provide all requested medical documentation and be approved for participation.
- 7.3 WVU maintains a procedure for direct transfer of sick or annual leave to a leave eligible employee who has requested and been approved for catastrophic leave.
- 7.3.1 Any leave donated by a leave eligible employee, but not used by the leave eligible employee to whom it was donated, shall be returned to the donating leave eligible employee and reflected in their leave balance.



- 7.4 WVU maintains a catastrophic leave bank which provides for the deposit of sick and annual leave into a "bank" from which leave eligible employees approved for catastrophic leave may withdraw leave.
- 7.5 Upon approval for a leave eligible employee to receive catastrophic leave, any leave eligible employee may donate sick and/or annual leave in one-day (7.5 hour) increments by following the approved procedures. No leave eligible employee shall be compelled to donate sick leave.
- 7.6 A leave eligible employee receiving the transfer of leave shall have any time which is donated credited to their leave record in one-day increments and reflected as a day-for-day addition to their leave balance. The leave record of the donating leave eligible employee shall have the donated leave reflected as a day-for-day reduction of the leave balance.
- 7.7 Use of donated credits may not exceed a maximum of twelve (12) continuous calendar months for any one catastrophic illness or injury. The total amount of leave received by transfer or withdrawn from a bank may not exceed an amount sufficient to ensure the continuance of regular compensation and shall not be used to extend insurance coverage post-retirement pursuant to West Virginia Code § 5-16-13. The leave eligible employee receiving donations of leave shall use any leave personally accrued on a monthly basis prior to receiving additional donated leave.
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## **SECTION 8: PARENTAL LEAVE.**

### **8.1 Parental Leave Program Description.**

- 8.1.1 Parental leave is an unpaid leave program.
- 8.1.2 During the parental leave, the institution shall continue group health insurance coverage provided that the employee pays the employer the full (employer and employee portions) premium cost of such group health plan.
- 8.1.3 The position held by the employee immediately before the parental leave is commenced shall be held for the employee's return to the position for a period of at least twelve-weeks and any additional time as required by the ADA and relevant law.

### **8.2 Eligibility for Parental Leave.**

- 8.2.1 An employee who has worked at least twelve (12) consecutive weeks for the state may request up to twelve (12) weeks unpaid parental leave.
- 8.2.2 The request must be due to birth or adoption by the employee or because of a planned medical treatment or care for the employee's spouse, son, daughter, parent, or dependent who has a serious health condition.

- 8.2.3 All annual leave must be exhausted before the parental leave begins. No more than a total of twelve (12) weeks of parental leave may be taken in any twelve (12) consecutive month period.
- 8.3 The employee should provide their supervisor with written notice two (2) weeks prior to the expected birth or adoption; or for the medical treatment; or for the supervision of a dependent.
- 8.4 The employee must provide Talent and Culture with certification by the treating physician and/or documentation regarding dependency status.
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**SECTION 9: FAMILY MEDICAL LEAVE ACT.**

- 9.1 The institution shall comply with the provisions of the federal FMLA, which provisions shall run concurrently with parental leave and/or any other applicable leave programs.
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**SECTION 10: PERSONAL LEAVE OF ABSENCE WITHOUT PAY.**

- 10.1 A leave eligible employee, upon application in writing and upon written approval by the institutional President (President), may be granted a continuous leave of absence without pay for a period of time not to exceed twelve (12) consecutive months provided all accrued annual leave has been exhausted.
- 10.2 The President, at their discretion, may require the written approval of the supervisor before accepting the written application of a leave eligible employee for a leave of absence without pay.
- 10.3 The President, at their discretion, shall determine if the purpose for which such a leave is requested is proper and within sound administrative policy.
- 10.4 At the expiration of a leave of absence without pay, the leave eligible employee shall be reinstated without loss of any rights, unless the position is no longer available due to a reduction in staff caused by curtailment of funds or a reduced workload.
- 10.5 Failure of the leave eligible employee to report promptly at the expiration of a leave of absence without pay, except for satisfactory reasons submitted in advance, shall be considered a resignation of their position.
- 10.6 During a personal leave, the institution shall continue group health insurance coverage provided that the leave eligible employee pays the employer the full (employer and employee portion) premium costs of such group health plan.

**SECTION 11: MILITARY LEAVE.**

- 11.1 An employee who is a member of the National Guard or any reserve component of the armed forces of the United States shall be entitled to and shall receive a leave of absence without loss of pay, status, or efficiency rating, for all days in which engaged in drills or parades, field service or active service to the State ordered by proper authority, or for field training or active service for the maximum period as provided by state and/or federal law.
- 11.2 The term "without loss of pay" shall mean that the employee shall continue to receive normal salary or compensation, notwithstanding the fact that such employee may receive other compensation from federal sources during the same period. Furthermore, such leave of absence shall be considered as time worked in computing seniority, eligibility for salary increases, credit for years of service and experience with the institution. An employee shall be required to submit an order or statement from the appropriate military officer in support of the request for such military leave unless military necessity prevents giving of such notice.
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**SECTION 12: SPECIAL EMERGENCY LEAVE WITH PAY.**

- 12.1 Special emergency leave with pay may be granted by the President or their designee to full-time employees in the event of extreme misfortune to the employee or the immediate family. The leave should be the minimum necessary, and in no case may it exceed five (5) days within any twelve (12) consecutive month period. Typical events which may qualify an employee for such leave are fire, flood, or other events (other than personal illness or injury or serious illness or death in the immediate family) of a nature requiring emergency attention by the employee.
- 12.2 The President or their designee has the authority to approve special emergency leave with pay to respond to emergency situations impacting the operations of the University. Requests for special emergency leave with pay shall be granted according to policies or procedures established by the Vice President for Talent and Culture.
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**SECTION 13: WITNESS AND JURY LEAVE.**

- 13.1 Upon application in writing, a leave eligible employee may be granted leave with pay as indicated hereinafter in this section provided the leave eligible employee is not a party to the action. Annual leave will not be charged under the provisions of this section.
- 13.1.1 When, in obedience to a subpoena or direction by proper authority, a leave eligible employee appears as a witness for the Federal Government, the State of West Virginia, or a political subdivision thereof, the leave eligible employee shall be

entitled to leave with pay for such duty and for such period of required absence.

- 13.12 When a leave eligible employee serves upon a jury, or is subpoenaed in litigation, the leave eligible employee shall be entitled to leave with pay for such duty and for such period of required absence.
- 13.2 When attendance in a court is in connection with a leave eligible employee's usual official duties, time required going and returning shall not be considered as absence from duty.
- 13.3 The leave eligible employee shall report to work if they are excused by the court before the end of their regular workday. Provisions for leave eligible employees who work a shift other than day shift shall be made according to institutional policy.
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#### **SECTION 14: LEAVE USE AS IT RELATES TO FACILITY DISRUPTION AND UTILITY SERVICE INTERRUPTION.**

- 14.1 Utility Service Interruptions - When extended power and utility service interruptions occur or work facilities are not available for other reasons, administrators should plan for leave eligible employees' usual work routine to be accomplished at alternate work locations or make affected leave eligible employees available to other administrators for work in other areas. Also, if an administrator deems it advisable and the leave eligible employee agrees, time off during the utility service interruption may be granted and charged against a leave eligible employee's accumulated annual leave or Compensatory Time Off. Combinations of the above alternatives may be necessary, but in all cases interruptions of work schedules must be dealt with in accordance with applicable laws, including West Virginia Code §12-3-13. This law is interpreted to mean that if pay is associated with the absence from work, the absence must be charged to accumulated annual leave or Compensatory Time Off.
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#### **SECTION 15: LEAVE USE AS IT RELATES TO EMERGENCY SITUATIONS.**

- 15.1 In the event that an emergency exists, the President, in conjunction with local or state public safety officials, has the authority to comply with the emergency situation and close the institution or part of the institution. The President, working with public safety officials, will determine when the emergency condition no longer exists. Should a leave eligible employee be required to work by the President during a declared emergency, the time worked shall be compensated according to policies or procedures established by the Vice President for Talent and Culture. Work time lost by any leave eligible employee during a declared emergency will be considered regular work time for pay purposes and will not require that the time be charged to annual leave, nor will there be a requirement that the time be made up.
- 15.2 Absences from work due to weather conditions other than during a declared emergency must be charged against accumulated annual leave, accumulated compensatory time, floating holiday

time or the leave eligible employee must be removed from the payroll for the time in question. Sick leave may not be charged for absences due to weather. The leave eligible employee's supervisor has discretion to assign a remote work assignment in response to weather conditions. Time lost from work also may be made up in the same work week at the discretion of the leave eligible employee's supervisor.

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**SECTION 16: LEAVE FOR RESIDENTS AND FELLOWS.**

- 16.1 Notwithstanding any other provision of this Rule, residents and fellows will receive leave in accordance with any applicable accreditation requirements to the extent those requirements are inconsistent with this Rule.
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**SECTION 17: DEFINITIONS.**

- 17.1 All defined terms for this Rule are contained within the Definitions Section of Board of Governors Talent & Culture Rule 3.1, unless the text clearly indicates a different meaning.
- 17.2 "FMLA" means the Family Medical Leave Act.
- 17.3 "ADA" means the Americans with Disabilities Act.
- 17.4 "Terminal Leave Period" means a period of paid leave following the employee's final working day.
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**SECTION 18: DELEGATION.**

- 18.1 The Board of Governors delegates to the Assistant Vice President for Talent and Culture the ability to adopt internal human resource policies and procedures in order to implement the provisions of this Rule. Any actions taken pursuant to this delegation must be consistent with the guidelines provided by this Rule.
- 18.2 To the extent federal and state law is inconsistent with this Rule and it is not possible for the University to comply with all, applicable law will govern. Accordingly, Talent and Culture, with advice from the Office of General Counsel, has the discretion to implement any necessary changes in order to comply with legal obligations.
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**SECTION 19: AUTHORITY.**

- 19.1 Family and Medical Leave Act ("FMLA") of 1993, 29 U.S.C. §§ 2601-2654; Uniformed Services Employment and Reemployment Act ("USERRA") 38 U.S.C. §§ 4301-4335; W. Va. Code §18B-1-6; §18B-2A-4; §18B-7-14; and §21-5D-1 to -9.

**SECTION 20: SUPERSEDING PROVISIONS.**

20.1 This Rule supersedes and replaces Higher Education Policy Commission (“HEPC”) Series 38 (W. Va. Code R. §§133-38-1 to -13), which was adopted November 19, 1992; HEPC Series 55 (W. Va. Code R. §§ 133-55-1 to -27, including Appendix A), which was adopted June 4, 2018 and any other current or subsequent Rule of the HEPC which relates to the subject matter contained within this Rule. This Rule also repeals and supersedes WVU BOG Policy 24 – Employee Leave, which was adopted on June 17, 2005, and any other Human Resources policy or procedure which relates to the subject matter contained within this Rule.