

**SOUTH CAROLINA STATE UNIVERSITY
PERSONNEL POLICIES AND PROCEDURES MANUAL**

SECTION: Holidays and Leave	Section: IV
	Subject: I
SUBJECT: Family and Medical Leave Act (FMLA) Guidelines	Effective: 06/05/09
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THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND SOUTH CAROLINA STATE UNIVERSITY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE UNIVERSITY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

FAMILY AND MEDICAL LEAVE ACT (FMLA) GUIDELINES

Definitions

- A. Spouse - a husband or wife as defined or recognized under state law for purposes of marriage, including a common law marriage in states where it is recognized.
- B. Parent - a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a child. This term does not include parents “in law.”
- C. Child - a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18, or age 18 or older and incapable of self-care because of a medical or physical disability.
- D. Serious health condition - an illness, injury, impairment, or physical or mental condition that involves:
 - 1. inpatient care (i.e., and overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with such inpatient care; or
 - 2. continuing treatment by a health care provider, which includes:
 - a. a period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition;
 - b. any period of incapacity related to pregnancy or for prenatal care;
 - c. any period of incapacity or treatment for chronic serious health condition which continues over an extended period of time, requires periodic visits, to a healthcare provider (at least twice a year), and may involve occasional episodes of incapacity (a visit to a healthcare provider is not necessary for each absence);

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- d. a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (only supervision by a healthcare provider is required, rather than treatment); or
- e. any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

Eligibility

Any employee who has worked for the State at least 12 months, and worked at least 1250 hours, over the previous 12 months prior to requesting leave under the Family and Medical Leave Act (FMLA) may be eligible for leave, in accordance with this policy and the Family and Medical Leave Act. For purposes of this policy, the 12 months need not be consecutive, but employment periods prior to a break in service of 7 or more years need not be counted unless the break in service was due to fulfillment of National Guard or Reserve military obligation, or a written agreement exists concerning the State's intention to rehire the employee after the break in service. An employee returning from National Guard or Reserve duty is credited with the hours of service that would have been worked except for the military service.

A break in service for this policy is defined as an absence of employment from state government.

Use of FMLA Leave

An eligible employee shall be granted up to a total of 12 workweeks of FMLA leave, in each calendar year on a continuous or intermittent basis, for any of the following reasons:

- A. For the birth of a son or daughter and to care for that child (eligibility expires 12 months after the date of the birth);
- B. For placement of a son or daughter for adoption or foster care with the employee (eligibility expires 12 months after the date of placement);
- C. To care for the employee's spouse, child or parent with a serious health condition;
- D. For a serious health condition that makes the employee unable to perform the functions of his or her position;
- E. For a qualifying exigency caused by the call to active duty of a member of the Armed Forces. Qualifying exigencies may include short notice deployment; attending certain military events and related activities; arranging for alternative childcare; addressing certain financial and legal arrangements; attending certain counseling sessions; rest and recuperation; and attending post-deployment reintegration briefings.

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- F. To care for a spouse, child, parent or next of kin who is a service member and is injured or becomes seriously ill while on active duty. Employees who are otherwise eligible for FMLA leave may take up to 26 weeks of leave to care for a covered service member during a single 12-month period. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her 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.
- G. If medically necessary, eligible employees may take FMLA leave on an intermittent basis or on a reduced schedule for their own serious health condition, the serious health condition of a spouse, daughter, son, or for military caregiver leave. Leave due to the birth or adoption of a child may be taken intermittently and must be completed within the 12-month period beginning on the date of the birth or placement of the child and is subject to supervisory approval.
- H. Spouses employed by South Carolina State University are limited in the amount of FMLA leave they may take. The employee and the employee's spouse may be limited to a combined total of 12 weeks of FMLA leave in a calendar year. For military caregiver leave, the employee and employee's spouse may be limited to a combined total of 26 weeks of leave in a single calendar year.

Charging FMLA Leave

It is the University's responsibility to declare leave as FMLA leave based on information provided by the employee.

- A. When the University designates leave as FMLA leave it must notify the employee. No leave may be designated as FMLA leave after the leave has ended, except as provided for under the FMLA.
- B. An eligible employee's FMLA leave allowance shall be charged in 15-minute increments.
- C. Any leave taken that qualifies as FMLA leave shall be declared as such by the University. The FMLA leave shall run concurrently with other leave types such as worker's compensation, sick leave, annual leave, and leave without pay, when applicable and shall be charged against all applicable leave types.

Scheduling FMLA Leave

- A. An eligible employee requesting FMLA leave must give his or her supervisor 30 days advance notice of the need to take FMLA leave when the need for leave is foreseeable. When the need for leave is not foreseeable, such notice must be given as soon as practical.

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- B. Employees must provide sufficient information for the University to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions; the family member is unable to perform daily activities; the need for hospitalization or continuing treatment by a health care provider; or circumstances supporting the need for military caregiver leave.

- C. The use of FMLA leave shall be subject to verification. An employee's request for FMLA leave to care for the employee's seriously ill spouse, child or parent, or due to the employee's own serious health condition, must be supported by a certification issued by the health care provider. Use of FMLA leave for eligible circumstances related to family members in the military must be supported by appropriate military certification to confirm the nature of the family member's military service or the existence of a qualifying exigency. Additional information to certify the need for FMLA leave may be required as determined by the University.

- D. FMLA leave may be denied or delayed if an eligible employee fails to provide the requested certification or other required documentation within timeframes specified. An employee who fraudulently obtains FMLA leave is not protected by the FMLA job restoration and may be subject to disciplinary action up to and including termination.

Use of Paid and Unpaid Leave

Generally FLMA leave is unpaid; however,

- A. Eligible employees are required to substitute their accrued sick leave for unpaid FMLA leave when the FLMA leave request qualifies for sick leave usage (e.g., all available sick leave for personal illness, ten days of sick leave for immediate family, etc.); or

- B. An eligible employee may elect to substitute accrued annual leave for unpaid FLMA leave.

Reinstatement from FMLA Leave

Upon return from FMLA leave, an employee who can still safely perform the position's essential functions shall be returned to the same position he or she held when the FLMA leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. That position shall involve the same or substantially similar duties and responsibilities, which shall entail equivalent skill, effort, responsibility, and authority.

Transfer of FMLA Leave

Eligible South Carolina State University employees who transfer to another State agency shall have their FMLA leave records in that calendar year transferred to the receiving agency.