

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

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TITLE: FAMILY AND MEDICAL LEAVE ACT

POLICY
REFERENCE NUMBER: 8-3-103

DIVISION OF
RESPONSIBILITY: Human Resource Services

DATE OF LAST REVISION: June 12, 2012

DISCLAIMER

PURSUANT TO SECTION 41-1-110 OF THE CODE OF LAWS OF SC, AS AMENDED, THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE SC STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION/THE SC TECHNICAL COLLEGE SYSTEM. THE STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION/THE SC TECHNICAL COLLEGE SYSTEM 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.

For more detailed information, consult the Family and Medical Leave Act (FMLA) and relevant federal regulations (<http://www.dol.gov/dol/topic/benefits-leave/fmla.htm>)

I. Eligibility for FMLA leave

Family and Medical Leave Act (FMLA) leave shall be granted to any employee who has worked for the State at least 12 months, and who has worked at least 1250 hours (defined as Fair Labor Standards Act (FLSA) compensable hours of work) during the 12-month period prior to the request for FMLA leave, including on-call hours. The agency will not interfere, restrain, or deny the exercise of any rights provided by the Family Medical Leave Act. The required total of 12 months of employment need not be consecutive.

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An agency can go back 7 years prior to the date of the need for leave to determine if the employee worked a total of 12 months with state government. An agency has the ability to go beyond 7 years if an employee left state employment due to National Guard or Reserve Military obligations or a written agreement reflecting an employer's intention to rehire after a break.

- A. In order to determine if exempt employees meet the 1250 hours of service, work records may be kept.
- B. State Government of South Carolina is considered a single employer for the purpose of determining FMLA leave.

II. Reasons for granting of FMLA leave

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

- A. For the birth of a son or daughter and to care for that child;
- B. For placement of a son or daughter for adoption or foster care with the employee;
- C. To care for the employee's spouse, son, daughter or parent with a serious health condition; and
- D. For a serious health condition that makes the employee unable to perform the functions of the employee's job.
- E. For qualifying exigencies arising out of the fact that the employee's spouse, son, daughter or parent is on active duty or called to active duty status as a member for the National Guard or Reserves in support of a contingency operation.

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Qualified exigencies may include:

1. short notice deployment;
2. military events and related activities;
3. childcare and school activities;
4. financial and legal arrangements;
5. counseling;
6. rest and recuperation;
7. post-deployment activities; and
8. additional activities not encompassed in other categories but agreed by the agency and the employee.

- 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.

Under the military caregiver leave provisions, an eligible employee who is the spouse, son, daughter, parent or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, may be entitled to up to a total of 26 workweeks during a single 12-month period to care for the service member who has a serious injury or illness 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.

Generally, the 12-month period, under the South Carolina State Government is a calendar year, with the exception of leave for the birth of a child and to care for the newborn child, and for the placement of a child for adoption or foster care. In these exceptions, the 12-month period expires after the date of the birth or placement.

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III. Definitions

- A. SPOUSE - a husband or wife as defined or recognized under state law for purposes of marriage, including a common law marriage.
- 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 "parent in law."
- C. CHILD, SON or DAUGHTER - a biological, adopted, or foster child, a stepchild, a legal ward, or a child incapable of self-care under or over the age of 18 and mentally or physically disabled.
- D. INCAPABLE OF SELF-CARE – the individual requires assistance to provide daily self-care of three or more daily activities such as grooming, hygiene, bathing, dressing and eating.
- E. PHYSICAL OR MENTAL DISABILITY – a physical or mental impairment that substantially limits one or more of the major life activities.
- F. QUALIFYING EXIGENCY (only applicable to military personnel) – one of the following: 1) short-notice deployment, 2) military events or activities, 3) child care and school activities, 4) financial activities and legal activities, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the employer and employee agree
- G. NEXT OF KIN – the closest blood relative of the injured or recovering service member.
- H. SERIOUS HEALTH CONDITION -
 - 1) an illness, injury, impairment, or physical or mental condition that involves either inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity or subsequent treatment in connection with such inpatient care; or

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- 2) continuing treatment by a healthcare provider. This includes:
 - a. a period of incapacity lasting more than three (3) 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 a chronic serious health condition which continues over an extended period of time, requires periodic visits to healthcare providers (at least twice a year), and may involve occasional episodes of incapacity. A visit to a healthcare provider 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. Only supervision by a healthcare provider is required, rather than treatment; or
 - e. any absence to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three (3) days if not treated.

IV. Scheduling FMLA Leave

An eligible employee requesting FMLA leave must give thirty (30) days advance notice to local management of the need to take FMLA leave when the need for leave is foreseeable. (e.g. expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member) When the need for leave is not foreseeable, such notice must be given as soon as practicable.

V. Medical and Other Certification

The use of FMLA leave shall be subject to verification. Certification from a health care provider must be supplied within fifteen (15) calendar days of the request for verification.

The Human Resource office may require that an employee requesting FMLA leave provide a health care certification form to support the need for leave due to the employee's own serious health condition or to care for the employee's seriously ill spouse, son, daughter or parent.

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Periodic recertification of a serious health condition may be required. The Human Resource office may require certification of qualifying exigency for military family leave or for serious injury and/or illness of the covered service member. The System Office/College may request the employee to provide reasonable documentation or statement of family relationship. The documents may include but not be limited to: child's birth certificate, or a court document or statement from the employee. Refusal by an employee to provide a fully completed medical certification or other required documentation may lead to denial of his or her FMLA leave request.

VI. Notification and Designation of FMLA leave

An employee request is not necessary for the employer to determine that leave time qualifies as FMLA leave. Such a determination may be made based on information provided to the employer and verified by the health care provider.

The System Office/College will notify the employee of his or her eligibility to take leave and will inform the employee of his or her rights and responsibilities under FMLA. It is the responsibility of the local Human Resource office to ensure the declaration¹ of leave as FMLA leave based on information provided by the employee or the employee's spokesperson, if the employee is incapacitated. If the local Human Resource office lacks sufficient information about the reason for an employee's use of paid leave, the Human Resource manager should inquire further of the employee or the spokesperson to determine whether the paid leave is potentially FMLA qualifying.

- A. When leave is designated as FMLA leave the employee must be notified. No leave may be designated as FMLA leave after the leave has ended however, if the employee was absent for an FMLA reason and the employer did not learn the reason for the absence until the employee's return (e.g. where the employee was absent for only a brief period), the employer may, upon the employee's return to work, promptly (within two (2) business days of the employee's return to) designate the leave retroactively with appropriate notice to the employee.
- B. An eligible employee's FMLA leave allowance shall be charged for the actual time an employee must be away from the job.

¹ Leave may be conditionally declared as FMLA leave subject to verification by the employee's health care provider.

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- C. Any leave taken that qualifies as FMLA leave should be declared as such. The FMLA leave will run concurrently with any other leave, such as workers' compensation, administrative leave, sick leave, annual leave and leave without pay, when applicable, and the leave will be charged against all leave types.

VII. Use of Paid and Unpaid Leave

Generally FMLA leave is unpaid; however,

- A. Eligible employees will be required to substitute their accrued sick leave for unpaid FMLA leave when the FMLA leave request qualifies for sick leave usage, or
- B. An eligible employee may elect to substitute accrued annual leave for unpaid FMLA leave.

VIII. Intermittent FMLA Leave and Reduced Schedule

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 parent, 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 System Office/College approval.

IX. Spouses Working for the State

Spouses employed by the State are limited in the amount of FMLA leave they may take for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition to a combined total of 12 weeks (or 26 weeks if leave to care for a covered service member with a serious injury or illness is also used). Leave for birth and care, or placement for adoption or foster care, must conclude within 12 months of the birth or placement.

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X. Maintenance of Insurance Benefits

The System Office/College will maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. The employee is responsible for the employee portion of the insurance premiums.

Should the employee take leave without pay during the FMLA leave, the employee must make arrangements with the System Office/College to pay for his/her share of the insurance premiums while on unpaid FMLA leave.

The System Office/College is obligated to maintain group insurance benefits under FMLA leave. However, when the employee makes notification of his/her intent not to return to work, the employee is responsible for the full insurance premium.

XI. Reinstatement from FMLA Leave

On return from FMLA leave, an employee who can still safely perform the position's essential functions is entitled to be returned to the same position the employee held when the FMLA leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

That position must involve the same or substantially similar duties and responsibilities, which must entail equivalent skill, effort, responsibility, and authority.

As a condition of restoring an employee whose FMLA leave was caused by the employee's own serious health conditions that made the employee unable to perform the employee's job, the employee must have his physician certify to the employer what date the employee is released to return to work, and what, if any, restrictions apply. Failure to provide appropriate documentation in a timely manner will prevent the employee from returning to work.

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XII. FMLA Leave Record

A leave record shall be maintained by the Human Resource office for each employee covered under the provisions of the FMLA. It is acceptable for employee leave requests to be created, approved and maintained via a secure (password protected) electronic system. If such a system is used, approval through the system will be considered the required signature of the employee and supervisor. Employees shall be able to view and print the leave records.

Failure to report leave taken is considered a falsification of work/time records and could be construed as being paid for hours not worked in violation of S.C. Code Ann. § 8-11-30 and may be subject to disciplinary action up to and including termination.

Such record shall:

- A. Reflect the maximum FMLA leave allowance (12 weeks in a calendar year) and charges in terms of hours.
- B. Indicate the number of FMLA leave hours used in the current calendar year.
- C. Indicate the number of hours in the employee's official workweek.
- D. Other information as determined by the Human Resource office.

XIII. Transfer of FMLA Leave

For eligible employees who transfer from one state agency to another, the transferring agency is responsible for transferring the employee's FMLA leave records to the receiving agency in that calendar year.