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Procedure for: All Campuses
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Issued by: Division of Human Resources

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I. Purpose of Policy

This document sets forth the University of South Carolina's Family and Medical Leave (FMLA) Policy for all employees, pursuant to the Family and Medical Leave Act of 1993, including military family leave entitlements enacted under the National Defense Authorization Act for FY 2008 and 2010 and regulations of the United States Department of Labor. This policy does not create any rights greater than those conferred on employees by the Family and Medical Leave Act of 1993 or the National Defense Authorization Act for FY 2008 and 2010.

II. Policy Statements

A. Eligibility

Employees must have been employed by the State of South Carolina for at least 12 months. The 12 months need not be consecutive. Employees must have

completed at least 1250 hours of service during the 12-month period preceding the employee's request for FMLA leave. State government is considered to be a single employer for the purpose of determining FMLA leave eligibility.

B. FMLA Provisions

The University will grant an eligible employee up to a total of 12 work weeks of unpaid leave during a calendar year for any of the following reasons:

1. Pregnancy, prenatal medical care, birth or adoption of a child or the foster care placement of a child (NOTE: eligibility expires 12 months after the date of the birth, adoption or placement)
2. To care for the employee's spouse, child, or parent with a serious health condition
3. A serious health condition of the employee that renders the employee unable to perform the essential functions of the employee's job.

C. Military Family Leave Entitlement

1. Eligible employees with a spouse, son, daughter, or parent on active duty or called to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative child care, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.
2. 26-Week Leave Entitlement – An eligible employee who is the spouse, child, parent, or next of kin of a covered service member may take up to 26 weeks of leave to care for a covered service member during a single 12-month period.
3. Veterans' 26-Week Leave Entitlement – An eligible employee who is the spouse, child, parent, or next of kin of a veteran may take up to 26 weeks of leave to care for a veteran for up to five years after the service member leaves military service during a single 12-month period.

D. Definitions

1. The Family and Medical Leave Act defines a family member as the employee's spouse, son, daughter, or parent, but not a parent "in-law."

2. A spouse is a husband or wife as defined or recognized under State law for purposes of marriage, including common law marriage in states where common law marriage is recognized.
3. A son or daughter is 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 mental or physical disability.
4. A parent is a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. The term does not include parents “in law.”
5. Serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves:
 - a. Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice, or residential medical care facility
 - b. Any period of incapacity requiring absence from work, school, or other regular daily activities of more than three calendar days that also involves continuing treatment by, or under the supervision of, a health care provider; or continuing treatment by, or under the supervision of, a health care provider
 - c. Continuing treatment by, or under the supervision of, a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days, or for prenatal care.
6. A health care provider is any doctor of medicine or osteopathy, podiatrist, optometrist, and nurse practitioner, or nurse midwife performing within the scope of their practice. Christian Science practitioners and chiropractors are health care providers to the extent defined under regulations issued by the U.S. Department of Labor.
7. Next of kin is the nearest blood relative of the service member, other than the service member’s spouse, parent, son, or daughter.
8. 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.

E. Coordination with Paid Leave Policies

1. The University requires employees to use available paid leave, pursuant to the applicable leave policy, prior to using FMLA leave without pay.
2. Paid leave time taken for any of the conditions stated above will count toward the 12 work weeks of FMLA leave. The FMLA policy does not allow paid leave to be taken in excess of the limits provided in other applicable leave policies, including but not limited to the sick Leave policy, annual Leave policy, or leave representations in the University Faculty manuals.
3. Leave taken for work-related disabilities also is subject to this policy.
4. FMLA leave will be charged for the actual time the employee must be away from the job.

F. Spouses Employed by the University

When both spouses are employed by the University of South Carolina, the aggregate number of work weeks for FMLA leave to which both may be entitled is limited to 12 weeks during the calendar year for the birth or adoption of a child or the foster care placement of a child. For military caregiver leave, the employee and the employee's spouse may be limited to a combined total of 26 weeks of leave in a single calendar year.

G. Intermittent or Reduced Schedule Leave

1. FMLA leave taken because of an employee's serious health condition or the serious health of an eligible family member may be taken on an intermittent or reduced-schedule leave basis when medically necessary.
2. Intermittent or reduced-schedule leave for the adoption or placement of a child may be taken only with the approval of the University, subject to departmental needs and University Policies and Procedures.

H. Benefits During FMLA Leave

1. During any period of FMLA leave the University will maintain the employee's coverage for health insurance, provided the employee continues to pay the health insurance premiums that normally would be deducted from the employee's paycheck.

2. If the employee fails to make the required health insurance premium payments within 30 days of the date the payments are due, health insurance coverage will be discontinued.
3. All payments must be made to the Payroll Office in accordance with the terms and conditions stated above.
4. If an employee elects not to continue health insurance during a period of FMLA leave, the coverage may be reinstated upon return from leave. The reinstated coverage will not be subject to exclusion because of a pre-existing condition unless the exclusion applied when the employee began FMLA leave.
5. If an employee notifies the University that they will not be returning from a period of FMLA leave, the University may terminate the employee's health insurance. In this case, the employee will be entitled to continuation of health insurance benefits only in accordance with the Consolidated Omnibus Budget Reconciliation Act (COBRA) and the provisions of the health insurance plan.

I. Employment Status

An eligible employee who takes FMLA leave is entitled to return from leave and be restored to the position held prior to beginning FMLA leave or to a comparable position with equivalent benefits, pay, and other terms and conditions of employment. The comparable position must involve the same or substantially similar duties and responsibilities and must entail equivalent skills, effort, responsibility, and authority.

J. Responsibility for Administration

1. The Division of Human Resources is responsible for FMLA leave approval, computation, leave adjustment, and leave policy interpretation. All provisions of this policy will be interpreted to be consistent with the Family and Medical Leave Act of 1993, including military family leave entitlements enacted under the National Defense Authorization Act for FY 2008 and 2010
2. Academic and administrative department heads are responsible for receiving FMLA leave requests and sending these requests to the Division of Human Resources Benefits Office or the Campus Human Resources Officer upon receipt, and for ensuring that attendance and leave are recorded accurately.

3. FMLA leave policies and procedures will be applied in an equitable manner to all eligible employees. In instances of suspected FMLA leave abuse or violation of policy, department heads or authorized supervisors may take disciplinary action in accordance with University policy and in consultation with the Division of Human Resources.
4. Additional permanent employees may not be hired to replace employees on FMLA leave. Temporary or substitute employees may be hired for limited periods of time to provide coverage during the absence of permanent employees on FMLA leave.
5. The University maintains leave records for each employee covered under the FMLA. Leave records are subject to audit.

III. Procedures

A. Requesting Family Medical Leave

1. An employee requesting FMLA leave should send a completed Application for Leave (form P-83) to the immediate supervisor. The P-83 must be accompanied by medical certification of the condition on the Application for Disability Leave With or Without Pay (form P-75), or certification of the adoption or placement of a child as specified in Section II.B.1 of this policy. The completed P-83 with all attachments should be sent through department channels to the Division of Human Resources Benefits Office or the Campus Human Resources Office.
2. Disability leave for 10 or more days taken pursuant to the sick leave policy will automatically be counted toward the allowed 12 weeks of FMLA leave.
3. Employees must complete form P-83 as noted in Section III.A.1. of this policy when asking for periods of leave less than 10 days to be treated as FMLA leave.
4. If the need for FMLA leave is foreseeable, the employee should provide 30 days notice.
5. If the need for FMLA leave is not foreseeable, notice must be given as soon as practicable.
6. If the employee fails to report to work when FMLA leave has been denied, the time taken may be treated as an unauthorized leave.

B. Certification

1. If the FMLA leave is for the birth of a child or the serious health condition of the employee or an eligible dependent, the Application for Leave (form P-83) requires certification from the health care provider. The required information should be provided on an Application for disability Leave With or Without Pay (form P-75) for an employee's illness. To certify an eligible dependent's serious health condition, the employee must submit a Family FMLA Certification. The appropriate form must include:
 - a. The date on which the serious health condition commenced
 - b. The probably duration of the employee's condition or an estimate of the amount of time the employee will be needed to care for a family member
 - c. Sufficient medical facts within the knowledge of the health care provider that would entitle the employee to take FMLA leave.
2. If the FMLA leave is for the adoption or foster care placement of a child, a copy of the adoption papers or letter from the attorney or agency handling the adoption or foster care placement must accompany the form P-83.
3. If the FMLA leave is for Military Family Leave, a copy of the applicable Military Orders, DD214 for Veterans, or other acceptable documentation must accompany the form P-83.

C. Second Opinions

1. The University may require the employee to get a second opinion from an independent health care provider at the expense of the department.
2. If the second opinion conflicts with the original opinion, a third opinion may be required.
3. If requiring a second or third opinion is being considered, the USC Division of Human Resources must be consulted for procedural guidance.

D. Scheduling

1. If the FMLA leave is for the planned medical treatment of the employee or a family member, or requires intermittent or reduced-schedule leave, the supervisor may request that the employee arrange a particular schedule or to reschedule appointments or treatment, subject to the consent of the health care provider.

2. Intermittent or reduced-schedule leave for the adoption or placement of a child may be taken only with the approval of the University.

E. Record Corrections

Requests by employees for corrections to their leave records must be made in writing within one month of issue of the VIP online paycheck for the pay period in question.

IV. Reason for Revision

Policy updated to include the military family leave entitlements enacted under the National Defense Authorization Act for FY 2008 and 2010 and to update the disclaimer statement.