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Procedure for: All Campuses  
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I. 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 Annual Federal Budget.

A. Policy Statements

1. 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.

## 2. 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:

- a. For the birth of a child and to care for that child. (Note: Eligibility expires 12 months after the date of birth).
- b. For placement of a child for adoption or foster care with the employee. (Note: Eligibility expires 12 months after the date of adoption or placement).
- c. To care for the employee's spouse, son, daughter, or parent with a serious health condition
- 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. Qualifying exigencies can include: 1) short notice deployment; 2) military events and related activities; 3) childcare and school activities; 4) financial and legal arrangements; and 8) additional activities not encompassed in other categories but agreed by the agency and the employee.

### **Military Family Leave Entitlement**

The University will grant an eligible employee up to a total of 26 work weeks of unpaid leave during a calendar year for any of the following reasons:

- a. **Military Caregivers' 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 during a single 12-month period to care for a covered service member.
- b. **Veterans' Caregivers' 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 during a single 12-month period to care for a veteran of the Armed Forces (including the National Guard or Reserves) discharged within the five-year period before the family member first takes military caregiver leave to care for a covered service member.

3. Definitions

- a. 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."
- b. A spouse is a husband or wife. This definition includes same-sex marriage and common law marriage in states where common law marriage is recognized.
- c. 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.
- d. 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."
- e. Serious health condition under basic FMLA guidelines is defined as an illness, injury, impairment, or physical or mental condition that involves:
  - 1) Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice, or residential medical care facility
  - 2) 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
  - 3) 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.

- f. 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.
- g. Next of kin is the nearest blood relative of the service member, other than the service member's spouse, parent, son, or daughter.
- h. A covered service member is a current member of the Armed Forces, (including a member of the National Guard or Reserves), who is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list, for a serious injury or illness. It also is a veteran of the Armed Forces (including the National Guard or Reserves) discharged within the five-year period before the family member first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of a covered service member.
- i. Covered active duty means, for members of the Regular Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; or, for members of the Reserve components of the Armed Forces (members of the National Guard and Reserves), duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.
- j. Serious injury or illness for a current service member is one that may render the service member medically unfit to perform his or her military duties. For a veteran, a serious injury or illness is one that rendered the veteran medically unfit to perform his or her military duties, or an injury or illness that qualifies the veteran for certain benefits from the Department of Veterans Affairs or substantially impairs the veteran's ability to work. For veterans, it includes injuries or illnesses that were incurred or aggravated during military service but that did not manifest until after the veteran left active duty.

#### 4. Coordination with Paid Leave Policies

- a. The University requires employees to use available paid leave, pursuant to the applicable leave policy, prior to using FMLA leave without pay.
- b. Paid leave time taken for any of the conditions will count toward the 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 provided in the University faculty manuals.
- c. Also subject to this policy is leave taken for work-related disabilities.
- d. FMLA leave will be charged for the actual time the employee must be away from the job as a result of approved FMLA leave.

5. 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.

6. Intermittent or Reduced Schedule Leave

- a. FMLA leave taken because of a serious health condition of an employee or an eligible family member may be taken on an intermittent or reduced-schedule leave basis when medically necessary.
- b. 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 approval and University Policies and Procedures.

7. Benefits During FMLA Leave

- a. 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.

- b. 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.
- c. All payments must be made to the Payroll Office in accordance with the terms and conditions indicated within this policy.
- d. If an employee elects not to continue health insurance during a period of FMLA leave, the coverage may be reinstated upon return from leave. When the employee returns to work, they should contact the Benefits Office immediately to ensure coverage is reinstated.
- e. 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.

8. 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.

9. Responsibility for Administration

- a. 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.
- b. Academic and administrative department heads are responsible for completing the approval section of Form P-83 (Employee Request for Leave form) and forwarding it to the Division of Human Resources' Benefits Office or the Campus Human Resources Officer. Additionally, they are responsible for ensuring that attendance and leave are recorded accurately.

- c. Employees are responsible for having their health care provider complete Form P-75 (Employee Medical Certification form) and ensuring that it is forwarded directly to the Division of Human Resources' Benefits Office.
- d. 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.
- e. Additional employees in FTE positions 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 in FTE positions on FMLA leave.
- f. The University maintains leave records for each employee covered under the FMLA. Leave records are subject to audit.

## II. Procedure

### A. Requesting Family Medical Leave

1. An employee requesting FMLA leave should send the Employee Request for Leave (form P-83) to the immediate supervisor. Additionally, the employee and the treating health care provider should complete the Employee Medical Certification (form P-75) and have it forwarded directly to the Division of Human Resources' Benefits Office or the Campus Human Resources' Office, as applicable. If the request is for adoption, certification of the adoption or placement of a child must be forwarded (in lieu of the form P-75). Paperwork should be sent to the Division of Human Resources' Benefits Office or the Campus Human Resources Office.
2. Disability leave for 3 or more days taken pursuant to the sick leave policy will automatically be counted toward the allowed 12 weeks of FMLA leave upon approval.
3. Employees must have time recorded in the appropriate time management system when asking for periods of sick leave less than 3 days. However, in the event of approved intermittent leave, to be treated as FMLA leave, a

form P-83 will need to be completed or recorded in the appropriate time management system.

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 unauthorized leave. Unauthorized leave is subject to disciplinary action, including and up to termination.

#### 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 Employee Medical Certification (form P-75) requires certification from the treating health care provider. Additionally, the employee and the department must complete the Employee Request for Leave (form P-83).

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 probable duration of the eligible family member'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 and based on departmental needs.
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 online paycheck for the pay period in question.

### III. Related Policies

- HR 1.03 Annual Leave
- HR 1.06 Sick Leave
- HR 1.12 Leave Without Pay
- HR 1.39 Disciplinary Action and Termination for Cause

### 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. Update to be consistent with current University guidelines, procedures, and FMLA policy.
- Update the disclaimer language

## **HR 1.07 Family and Medical Leave Policy Appendix Emergency Family and Medical Leave Expansion Act**

### **PURPOSE**

This policy appendix is issued to comply with the Families First Coronavirus Response Act (FFCRA) and to assist employees affected by the COVID-19 outbreak with job-protected leave. This policy appendix will be in effect from April 1, 2020, until December 31, 2020. HR 1.07, Family and Medical Leave, applies to all other family and medical leave.

### **DEFINITIONS**

**Child** - a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

**Childcare Provider** – a provider who receives compensation for providing childcare services on a regular basis, including, but not limited to:

- a center-based childcare provider
- a group home childcare provider
- a family childcare provider (one individual who provides childcare services for fewer than 24 hours per day, as the sole caregiver, and in a private residence)
- other licensed provider of childcare services for compensation
- a childcare provider that is 18 years of age or older who provides childcare services to children who are either the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, at the direction of the parent.

**School** - an elementary, middle, or high school.

### **POLICY STATEMENT**

The Emergency Family and Medical Leave Expansion Act (EFMLA) expands the federal Family and Medical Leave Act to provide leave for employees who are unable to work, including work-from-home, as a result of having to care for their child when the school or place of care has been closed, or the regular childcare provider is unavailable due to a public health emergency with respect to COVID-19.

Employees are eligible to take leave under the EFMLA Act if they have been employed at least 30 calendar days. This includes employees in non-FTE and non-leave accruing positions, such as temporary, research grant, time-limited and student employees.

Qualified employees will have up to 12 weeks of leave to use from April 1, 2020, through December 31, 2020, for the purposes stated above. This time is included in, and not in addition to, the total FMLA leave entitlement of 12 weeks in a 12-month period.

Leave under the EFMLA will be unpaid for the first 10 days of leave; however, employees may use any accrued leave during this time. The employee may also elect to use the paid leave provided under the Emergency Paid Sick Leave Act to cover these first 10 days.

After the first 10 days, leave will be paid at two-thirds of an employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work. Pay provided under EFMLA will not exceed \$200 per day and \$10,000 in total. Any unused portion of this leave will not carry over to the next year.

Employees may use any accrued leave to augment leave taken pursuant to the EFMLA up to their regular salary rate.

While an employee is on leave, the university will continue the employee's benefits in the manner described in HR 1.07.

EFMLA provides the same job protections as FMLA.

## **PROCEDURES**

Procedures, forms, and general guidance related to this policy can be found on the [Division of Human Resources website](#).