

ADMINISTRATIVE DIVISION HR Division of Human Resources		POLICY NUMBER HR 1.07
POLICY TITLE Family and Medical Leave		
SCOPE OF POLICY USC System		DATE OF REVISION <i>October 13, 2022</i>
RESPONSIBLE OFFICER Vice President for Human Resources		ADMINISTRATIVE OFFICE Division of Human Resources

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PURPOSE

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.

DEFINITIONS AND ACRONYMS

Covered Service Member - 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.

Covered Active duty - 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.

Family and Medical Leave Act (FMLA) - Federal law requiring covered employers to provide eligible employees with job-protected and unpaid leave for qualified medical and family reasons.

Family Member - The employee’s spouse, son, daughter, or parent, but not to include siblings,

grandparents, or “in-laws.”

Full-Time Equivalent (FTE): A position authorized by the General Assembly which is expressed as a numerical value as a percentage of time in hours and of funds.

Health Care Provider - Any doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices or any other person determined by the Secretary of Labor to be capable of providing health care services. Reference details by visiting the Department of Labor website

Next of Kin for Covered Service Member -The nearest blood relative of the service member, other than the service member’s spouse, parent, son, or daughter.

Parent - A biological, adoptive, step or foster father or mother or an individual who stands or stood in loco parentis to an employee when the employee was a minor. The term does not include parents “in law.”

Serious Health Condition - 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.

Serious Injury or Illness for a Current Service Member - One that may render the service member medically unfit to perform ~~his or her~~their military duties. For a veteran, a serious injury or illness is one that rendered the veteran medically unfit to perform ~~his or her~~their 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.

Spouse - 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.

Son or daughter - 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.

POLICY STATEMENT

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.

A. Eligibility

Employees must have been employed by the State of South Carolina for at least 12 months. The university will 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. The university will go back more than 7 years if an employee left state employment due to National Guard or Reserve Military obligations or a written agreement is provided reflecting an employer's intention to rehire after a break.

Employees must have worked at least 1,250 hours (defined as FLSA compensable hours of work) during the 12-month period prior to the request for FMLA leave, including "on-call" hours. Paid leave and unpaid leave, including FMLA leave, are not included as working hours. Special hours of service requirements apply to airline flight crew employees.

~~By interpretation, State government is considered to be a single employer for the purpose of determining FMLA leave eligibility. By interpretation of the United States Department of Labor, State government is considered to be one employer for the purpose of determining FMLA leave.~~

B. FMLA Provisions

1. 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/or to bond with the 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, and/or to bond with the child. (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; 5) counseling; 6) rest and recuperation; 7) post- deployment activities; and 8) additional activities not encompassed in other categories but agreed to by the university and the employee.

2. Military Caregiver Leave- The university will grant an eligible employee up to a total of 26 work weeks of unpaid leave during a single 12-month period 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.

C. Spouses Employed by the State of South Carolina

1. When both eligible spouses work for the State of South Carolina, they are limited to a combined total of 12 work weeks of leave in a 12-month period for the following FMLA-qualifying reasons:

- a. the birth of a son or daughter and bonding with the newborn child,
- b. the placement of a son or daughter with the employee for adoption or foster care and bonding with the newly-placed child, and
- c. the care of a parent with a serious health condition.

2. Eligible spouses who both work for the State of South Carolina are also limited to a combined total of 26 work weeks of leave in a single 12-month period to care for a covered servicemember with a serious injury or illness ("military caregiver leave") if each spouse is a parent, spouse, son or daughter, or next of kin of the servicemember. When spouses take military caregiver leave as well as other FMLA leave in the same leave year, each spouse is subject to the combined limitations for the reasons for leave listed above.

D. Notification and Application for FMLA Leave

1. An eligible employee requesting FMLA leave must give 30 days advance notice to the university of the need to take FMLA leave when the need for leave is foreseeable.
2. When the need for leave is not foreseeable, such notice must be given as soon as practical.

E. Coordination of FMLA with Paid and Unpaid Leave

1. FMLA leave is unpaid; however,
 - a. An eligible employee will be required to substitute accrued sick leave, ~~or -parental leave or adoption leave~~ for unpaid FMLA leave when the FMLA leave request qualifies for sick leave ~~or -parental leave or adoption leave~~ usage, or
 - b. An eligible employee may elect to substitute accrued annual leave, compensatory time and holiday compensatory time ~~and/or accrued compensatory time~~ for unpaid FMLA leave.
 - ~~b.c.~~ For the birth of a child, any leave taken for bonding purposes after the recovery or incapacitated period indicated by a health care provider must be utilized as annual leave, accrued compensatory time, leave without pay, or Paid Parental Leave if applicable.
2. Paid and unpaid leave time taken will count toward the allowable amount of the approved FMLA leave, and must be taken in accordance with applicable leave policies.
3. Paid Parental Leave (PPL) (as outlined in HR 1.08 Paid Parental Leave) must run concurrently with leave taken pursuant to the Family and Medical Leave Act (FMLA) and any other unpaid leave to which the eligible state employee may be entitled as a result of the qualifying event. However, an eligible state employee shall be eligible for PPL even if the employee has exhausted their FMLA leave, or is not eligible for FMLA coverage, at the time of the qualifying event. If an employee becomes eligible for FMLA leave while on PPL, the employee must use FMLA leave, and the PPL will run concurrently with FMLA leave.
4. Absences for 3 or more days taken pursuant to the sick leave policy may automatically be counted toward the allowed 12 weeks of FMLA leave if eligible.
5. The use of FMLA leave shall be subject to verification.
6. 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.
7. The university maintains leave records for each employee covered under the FMLA. Leave records are subject to audit.

F. Intermittent or Reduced Schedule Leave

1. FMLA leave taken because of the 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.

2. Intermittent or reduced-schedule leave for bonding with a newborn or 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.
3. It may be requested that an employee arrange a particular schedule or reschedule appointments or treatment, based on departmental needs and subject to the consent of the health care provider.

G. Benefits During FMLA Leave

1. During any period of FMLA leave the university will maintain the employee's insurance coverage, provided the employee continues to pay the insurance premiums that normally would be deducted from the employee's paycheck.
2. If the employee fails to make the required insurance premium payments within 30 days of the date the payments are due, insurance coverage will be discontinued.
3. All payments must be made to the Payroll Department in accordance with the terms and conditions indicated within this policy.
4. If an employee elects not to continue insurance coverage 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 within 31 days.
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 insurance coverage. In this case, the employee will be entitled to continuation of insurance benefits only in accordance with the Consolidated Omnibus Budget Reconciliation Act (COBRA) and the provisions of the insurance plan.

H. Employment Status

1. 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.
2. 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.

PROCEDURES

Employee Responsibility

An employee requesting FMLA leave must submit appropriate documentation, as indicated below,

through the university timekeeping system to the Division of Human Resources for review and approval. The Employee is responsible for any cost associated with having paperwork completed by a health care provider. Employees are to submit medical documentation only to the Division of Human Resources or to their departmental leave administrator. An FMLA medical certification should not be submitted directly to a supervisor.

The university may require the employee to get a second opinion from an independent health care provider at the expense of the department. If the second opinion conflicts with the original opinion, a third opinion may be required.

An employee may need to provide additional information regarding their request or provide periodic recertification of their need for leave. Employees are expected to respond promptly to requests for information from the Division of Human Resources. Failure to respond in a timely manner may result in a denial of leave usage under the FMLA.

Employees who are not leave earning or who are otherwise unable to submit their documentation electronically, may submit the appropriate FMLA documentation along with an Employee Request for Leave [Form P-83](#) to their departmental leave administrator.

Employees must notify their supervisor of any change of circumstances for which leave is being taken.

Employees who are taking intermittent FMLA leave must inform their supervisor if a request for leave is for a reason for which an FMLA absence has been approved.

Employees must consult with their supervisor regarding the scheduling of planned medical treatment.

~~Employees must comply with their department's routine procedures for requesting leave.~~

Employees are responsible for submitting their own absence requests in HCM and must comply with their department's routine procedures for requesting leave.

If an employee is unable to timely submit a leave request, the departmental leave administrator should submit all applicable leave requests on an employee's behalf.

To modify the allowable time given under the FMLA, the employee must provide a note from the same treating health care provider who completed the original medical certification. If the employee is under the care of a new or additional health care provider, a new FMLA medical certification will need to be completed.

Employees who are out of work for a continuous period of time for their own serious health condition are required to provide a return-to-work statement to the Division of Human Resources from their physician prior to or upon their return to work.

Employees are expected to return to work by the end of the approved FMLA leave period. If an employee fails to return to work, the continued absence will no longer be protected under the FMLA.

Qualifying Event	Required Form or Documentation
Employee's own serious health condition, including the birth of a child	<u>Employee Health Certification Form</u>
Bonding with a newborn child	Documentation confirming family relationship and date of birth. For example, Birth Certificate, letter from hospital where child was delivered.
Adoption or foster care of child	Certificate of Adoption or Placement of Adoption. For example, letter from attorney or agency handling adoption of placement, court documentation.
Care for a family member	<u>Family Health Certification Form</u>
Military leave requests for foreign deployment of an employee's spouse, child, or parent	<u>Military Qualifying Exigency Form</u>
Care for a family member who is an active military member with a serious injury or illness	<u>Military Caregiver Form</u>
Care for a family member who is a covered veteran with serious injury or illness	<u>Military Caregiver Veteran Form</u>

Supervisor Responsibility

Supervisors must be attentive to their employee's absences. If an employee is out of work for more than three consecutive days or has repeated or excessive absences their absences may be related to an FMLA qualifying reason. The supervisor must notify their departmental Leave Administrator so that the employee may be properly informed regarding their FMLA rights.

Supervisors must ensure that the employee's FMLA usage in the university timekeeping system is recorded accurately and [absence requests are submitted](#) in a timely manner. They must also notify their departmental Leave Administrator immediately when an employee exhausts their applicable leave balance.

Supervisors are responsible for arranging coverage of the employee's job duties while the employee is absent from work.

Supervisors must ensure that employees that are out of work for ~~continuous~~ [continuous](#) period of time for their own serious health condition provide a return-to-work statement from their physician prior to or upon their return to work.

Supervisors who have concerns regarding an employee's FMLA leave usage should contact the Benefits Office immediately.

Supervisors must not accept a completed FMLA medical certification provided by an employee and are to advise their employee to submit all documentation containing medical information to the departmental Leave Administrator or to the Benefits Office.

Supervisors must not require an employee approved for intermittent FMLA to provide a doctor's note for each associated absence taken.

Supervisors must not interfere with, restrain, or deny an employee's FMLA rights and supervisors should not retaliate against an employee who exercises their FMLA rights.

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

Information about [employee rights under the FMLA](#) is available from the United States Department of Labor.

RELATED UNIVERSITY, STATE AND FEDERAL POLICIES
 Consolidated Omnibus Budget Reconciliation Act (COBRA)
 Family and Medical Leave Act of 1993
 National Defense Authorization Act for FY 2008 and 2010.
[HR 1.03 Annual Leave](#)
[HR 1.06 Sick Leave](#)
[HR 1.08 Paid Parental Leave](#)
[HR 1.12 Leave of Absence \(Leave Without Pay\)](#)
[HR 1.39 Disciplinary Action and Termination for Cause](#)

HISTORY OF REVISIONS

DATE OF REVISION	REASON FOR REVISION
July 26, 2021	Updated to new format. Clarified that for FMLA purposes the employer is the State of South Carolina. Updated information about required use of sick leave and optional use of annual leave and compensatory time. Clarified roles of employee and supervisor. Removed COVID related appendix.
October 13, 2022	Added Paid Parental Leave information and link to new policy
XXX	Updated to comply with the new State Human Resources regulations.