



Policy Title:	Family Medical Leave Act (FMLA)
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Policy Management Area(s):	Human Resources and Equal Opportunity

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**POLICY:**

It shall be the policy of Coastal Carolina University to implement the Family and Medical Leave Act. The Family and Medical Leave Act of 1993 (FMLA) allows the University to grant eligible employees up to 12 weeks of unpaid leave or accrued paid leave in any calendar year, to run concurrently with sick leave. This leave is to be granted for certain family and medical reasons. Employees are eligible if they have worked for the University for at least one year or for 1,250 hours over the previous 12 months. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights provided by law.

**PROCEDURE:**

- I. FMLA applies only to employees employed 12 months or longer and who have worked 1250 hours or more in the preceding 12 months prior to commencement of leave.
- II. Any questions, concerns or disputes with this policy should be directed to the University's Office of Human Resources and Equal Opportunity (Human Resources) (HREO) in writing.

### III. GENERAL PROVISIONS

- A. The University will grant up to 12 weeks of leave (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees.
- B. As a general rule, employees must request leaves of absence under this policy, but in appropriate situations (including hospitalizations, or for injuries which may be subject to workers' compensation), employees may be placed on FMLA leave status without application. All requests for leave under the FMLA should be directed to Human Resources.

### IV. ELIGIBILITY

To qualify for FMLA leave, an employee must meet all of the following conditions:

- A. The employee must have worked for the University or for the State of South Carolina for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
- B. The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, those hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.
- C. In order to determine if those employees who are exempt from the FLSA meet the 1,250 hours of service, work records may be kept. Otherwise, exempt employees are presumed to have met the 1,250 hours of service.
- D. South Carolina State government is considered a single employer for the purposes of determining FMLA leave.

### V. REASONS FOR LEAVE OF ABSENCE

An eligible employee will be granted FMLA leave for one or more of the following reasons:

- A. A serious health condition, including disability resulting from an on-the-job injury, that prevents the employee from being able to perform his job;
- B. The employee's spouse, child or parent has a serious health condition and the employee must be absent from work in order to care for that relative;
- C. To care for a natural child, adopted child or formally placed foster child, provided that entitlement to leave to care for a child who is newly born or newly received in the employee's household shall end 12 months after a natural child is born or 12 months after an adopted or foster child is received in the employee's household;
- D. A "qualifying exigency" arising out of the fact that an employee's spouse, child or parent is on or has been called to active duty military status. See Section 14(C) for further information; and/or
- E. The employee's family member is a covered service member with a serious illness or injury incurred in the line of duty while on active duty, and the employee must be absent from work in order to care for that relative. See Section 14 (D) definition of family members and other guidelines regarding this reason for leave.

#### VI. PROOF OF NEED FOR LEAVE (MEDICAL CERTIFICATION)

- A. Proof of need for leave is required unless waived by the University due to special circumstances. The University will provide certification forms for the employee and/or treating physician to complete. Failure to timely complete and return the required certification forms, including incomplete or insufficient information on the required forms, may result in denial of leave.
- B. When the University has reason to doubt a certification, a second opinion from an independent physician may be required (at the University's expense). In the event of a conflict between the two opinions, a third opinion from a mutually selected physician may be obtained at the University's expense.
- C. The University may require that an employee provide timely recertification of a continuing need for leave as described below:
  - 1. As a general rule the University will not require recertification more often than every 30 days and only in connection with an absence by the employee unless:
    - a. The medical certification indicates that the minimum duration of

- the condition is more than 30 days, and the duration outlined in the medical certification has lapsed;
- b. The medical certification indicates that the minimum duration of the condition is less than 30 days and the employee requests an extension of leave;
  - c. The circumstances described in the previous medical certification have changed significantly; or
  - d. The University receives information that casts doubt upon the employee's stated reason for the absence or continuing validity of the medical certification.
2. Notwithstanding any of the above, the University may require recertification at least every six months in connection with an absence by the employee.
  3. When the employee's need for leave lasts beyond a single leave year, the University may require recertification in each subsequent leave year.

## VII. LENGTH OF LEAVE

- A. For reasons V. A, B and D stated above, an eligible employee is entitled to the equivalent of a total of 12 weeks of leave during a calendar year.
- B. For reason V. E stated above, an eligible employee is entitled to the equivalent of a total of 26 weeks of leave during any calendar year.
- C. Leave to care for a newly born or newly received child must be taken consecutively, unless the University determines that intermittent leave is appropriate.
- D. Leave required because of the employee's own serious health condition, the serious health condition of a spouse, child or parent, or a qualifying exigency resulting from a spouse, child or parent either on or being called to active military duty may be taken consecutively or intermittently as medically necessary.
- E. In case of intermittent leave, the University may require the employee to transfer temporarily to another position that better accommodates recurring periods of leave than does the employee's regular position.
- F. For the purposes of FMLA, the University operates on a calendar year, meaning the 52-week period for all active employees begins on January 1.
- G. The total of 12 weeks (or 26 weeks with respect to military-related reasons) of leave includes all leave taken for the approved FMLA reason regardless of whether it is paid (using sick, annual or other paid leaves), unpaid, covered under worker's compensation or any insurance disability compensation.

## VIII. EFFECT OF FMLA LEAVE ON PAID TIME OFF

- A. Provided the employee follows the eligibility and usage requirements of the sick and annual leave policies, an employee who is absent for an FMLA-covered reason will receive any accrued sick leave pay, and once sick leave pay has been exhausted, then any accrued annual leave pay. This does not apply to employees receiving pay through workers' compensation, short-term disability insurance or long-term disability insurance. Once available paid leave has been exhausted, any remaining FMLA leave is unpaid.
- B. Employees failing to properly call in or notify their supervisors as required in the sick and annual leave policies may not be approved to use paid leave for the period of absence, but their absence may still be protected under the FMLA.

## IX. EFFECT OF LEAVE ON ACCRUAL OF FRINGE BENEFITS

- A. Benefit Plans (including health and dental insurance)
  - 1. An employee taking FMLA leave must continue to pay his/her portion of benefit plan premiums. If the employee is in a paid status (using sick, annual or other paid leave), the premiums will be deducted from the employee's paycheck as usual. Once the employee goes on unpaid leave, the employee may continue to pay the portion of the premiums that would normally be deducted from his/her paycheck or drop coverage due to a reduction in hours per PEBA guidelines.
  - 2. In situations where the return to work date is foreseeable (e.g., birth or adoption of a child), the employee and the University may agree that the employee portion will not be paid while the employee is on approved leave but, upon return to work, the normal payroll deduction will be doubled to satisfy the accrued premium in arrears. In situations where the return to work date is not known, the employee and the University will arrange a payment plan whereby the employee will pay on at least a monthly basis.
- B. Failure to Pay Required Premiums
  - 1. An employee who fails to adhere to the agreed-upon payment plan (explained above) will be subject to cancellation of the employee benefit plans. The employee will be provided a 30-calendar-day grace period to remit past due premiums. At that point, the employee will be mailed a letter giving him/her an additional 15 calendar days to bring the premium payments current (past due and current amounts).
  - 2. If the account is not brought current, then the employee benefit plans will be cancelled in accordance with PEBA guidelines.
- C. Paid Leave Accruals

Time lost from work not paid by the University (including time paid by workers' compensation, short-term or long-term disability insurance) is not considered time worked for the purpose of accrual of paid sick leave or paid annual leave.

## X. EMPLOYEE RESPONSIBILITY

- A. An employee who requests FMLA leave must give at least 30 days advance notice to Human Resources if the need for leave is foreseeable based on expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee, covered family member or covered service member. If 30 days' notice is not practicable, notice must be given as soon as practicable. As soon as practicable is defined as no later than the business day following the day the employee becomes aware of the need for leave absent extenuating circumstances. Verbal notice to the employee's supervisor or any member of management in the employee's chain of command is considered sufficient for these notification purposes. However, the employee is still required to complete the appropriate paperwork provided by the University.
- B. An employee who was approved for FMLA leave on an intermittent basis, and is absent for a reason unrelated to the covered FMLA condition, must notify his/her supervisor, the HREO benefits area and the Payroll Department in order for the absence NOT to be counted against the FMLA allotment.
- C. Once approved for FMLA leave, whether on a continuous or intermittent basis, an employee needing to be absent for an FMLA-protected reason must properly call in or notify his/her supervisor as required by the sick and annual leave policies. Failure to do so may result in the denial of the use of paid leave for the period of absence, but the absence may still be protected under the FMLA.
- D. Once approved for FMLA leave, whether on a continuous or intermittent basis, an employee needing to schedule planned medical treatment must consult with Human Resources and make a reasonable effort to schedule treatment so as not to disrupt the operations of the University. For a series of medical treatments, the employee must consult with Human Resources prior to scheduling the series of treatments to work out a treatment schedule that best suits the needs of the employee and the supervisor, subject to the approval of the health care provider.

## XI. RETURN TO DUTY/REINSTATEMENT

- A. At or before the conclusion of the FMLA leave of absence, the employee is entitled to reinstatement to his/her former position or to an equivalent position. In the event the employee was absent due to his/her own serious health condition, the employee must furnish a return-to-work release from a physician if the return date differs from that reflected on the original completed medical certification.

- B. There may be instances in which Coastal Carolina University requires a fitness for duty certification by the attending physician. In the event the University requires a second opinion, the University will be responsible for costs associated with obtaining the fitness for duty certification.

## XII. TERMINATION OF LEAVE OF ABSENCE

A leave of absence under this policy will end when the need for the leave of absence ends or when the maximum leave (12 weeks generally or 26 weeks if military related) has been taken, whichever occurs sooner.

## XIII. AUTOMATIC TERMINATION OF EMPLOYMENT

An employee's employment will automatically terminate if he/she does not return to full active-employment status at the conclusion of the approved FMLA leave period or, if requested, at the conclusion of any approved extended leave beyond FMLA the leave period. However, the employee is eligible to reapply for any open position for which he/she is qualified.

## XIV. SPECIAL SITUATIONS

- A. Spouses – When both spouses are employed by the University or other state agency, their combined right to a leave of absence to care for a parent with a serious medical condition, or for the birth or adoption of a child is 12 weeks in a 12-month period. Similarly, when using FMLA to care for an injured service member, their combined right to all FMLA leave for any combination of reasons is limited to 26 weeks in any single 12-month period.
- B. Key Employees (highest paid 10% of all salaried employees) – Key employees may be denied reinstatement rights if reinstatement would cause substantial and grievous economic injury to the University's operations.
- C. Military-Related Qualifying Exigencies – Use of this leave requires the employee to produce an authentic copy of the service member's military orders. Qualifying exigencies include:
  - 1. Short-notice deployment of seven calendar days or less
  - 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
  - 8. Additional activities
- D. Care for an Injured or Ill Service Member

1. Family Member. The eligible employee must be the service member's spouse, child, parent or next of kin to qualify for this leave. Next of kin is the nearest blood relative other than those previously stated.
2. An employee is entitled to one single 12-month period of leave per service member. An employee with more than one injured or ill service member may take additional single 12-month periods as needed provided that the 12-month periods do not overlap.
3. When using FMLA to care for an injured or ill service member, the employee's combined right to all FMLA leave for any combination of reasons is limited to 26 weeks in any single 12-month period. For example, an employee may use 12 weeks of FMLA for the birth of a child and 14 weeks of FMLA to care for an injured service member for a total of 26 weeks of FMLA in any single 12-month period.

#### XV. RESPONSIBILITY FOR ADMINISTRATION

- A. Human Resources is responsible for FMLA leave approval, computation, leave 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.
- B. FMLA leave policies and procedures will be applied in a non-discriminatory manner to all eligible employees. In instances of FMLA leave abuse or violation of this policy, the University may take disciplinary action in accordance with University policy.