

HORRY-GEORGETOWN TECHNICAL COLLEGE

PROCEDURE

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Related Policy: 3.3.9
Title: Family and Medical Leave Act
Responsibility: Vice President, Human Resources and Employee Relations

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President

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 AGENCY.

For more detailed information, consult the Family and Medical Leave Act (FMLA) and relevant federal regulations. State government is considered a single employer for the purposes of determining FMLA leave.

I. Eligibility for FMLA leave

Family and Medical Leave Act (FMLA) leave shall be granted to any employee who has worked for the employer for a total of at least 12 months and who has worked at least 1,250 hours (defined as Fair Labor Standards Act (FLSA) compensable hours of work) during the 12-month period prior to the requests for FMLA leave, including "on call" hours. The College 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. The College can go back to 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 College has the ability to go beyond 7 years if an employee left state employment due to National Guard or Reserve Military obligations to a written agreement reflecting an employer's intention to rehire after a break.

In order to determine if exempt employees meet the 1,250 hours of service, work records must be kept.

II. Reason for granting of FMLA leave

The Family and Medical Leave Act (FMLA) provides employees the right to take unpaid leave or accrued paid leave for a period of up to 12 work weeks in any calendar year, to run concurrently with sick leave, for any of the following reasons:

- A. For birth of a son or daughter and to care for the newborn child;
- B. For placement with the employee of a son or daughter for adoption or foster care;
- C. To care for the employee's spouse, son, daughter or parent (but not parent-in-law) 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.

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
- 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.

- E. For qualifying exigencies, is a member of the Armed Forces, 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.

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 College and the employee.

- F. To care for a spouse, child, parent or next of kin who is a current 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 or 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 their 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 (items II A and B). In these exceptions, the 12-month period expires after the date of the birth or placement.

III. Scheduling FMLA leave

Under FMLA, the College has the right to a 30-day advance notice from the employee if 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) Failure to comply with these requirements may result in the denial of FMLA leave. When the need for leave is not foreseeable, such notice must be given as soon as practicable.

IV. Medical and Other Certification

The use of FMLA leave shall be subject to verification.

The Human Resources office may require that an employee's requesting FMLA leave provide an authorized health care certification form to support the need for leave due to the employee's own serious health condition or that of the employee's seriously ill spouse, son, daughter, or parent. If required, certification from an authorized health care provider/practitioner must be supplied within fifteen (15) calendar days of the request for verification. 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 their FMLA leave request.

V. 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 their eligibility to take leave and will inform the employee of their rights and responsibilities under FMLA. It is the responsibility of the local Human Resources office to ensure the declaration⁽¹³⁾ 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 Resources office lacks sufficient information about the reason for an employee's use of paid leave, the Human Resources 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),

⁽¹³⁾ Leave may be conditionally declared as FMLA leave subject to verification by the employee's health care provider.

the employer may, upon the employee's return to work, promptly (within two (2) business days of the employee's return) 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.
- 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 worker's compensation, administrative leave, sick leave, annual leave and leave without pay, when applicable, and the leave will be charged against all leave balances.

VI. 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.

VII. 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, and 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.

VIII. 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 for 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 place for adoption or foster care, must conclude within 12 months of the birth or placement.

IX. 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 their 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 their intent not to return to work, the employee is responsible for the full insurance premium.

X. Reinstatement from FMLA Leave

On return of 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 substantial similar duties and responsibilities which must entail equivalent skills, 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.

XI. FMLA Leave Record

A leave record shall be maintained by the Human Resources 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 Resources office.

XII. Transfer of FMLA Leave

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

ADDENDUM

FAMILY FIRST CORONAVIRUS RESPONSE ACT (FFCRA) – EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (EFMLA)

The purpose of this Addendum to the State Board for Technical and Comprehensive Education (SBTCE) procedure, Family and Medical Leave Act (FMLA), is to outline procedures for administering the Emergency Family and Medical Leave Expansion Act (EFMLA), a *temporary* expansion of the Family and Medical Leave Act (FMLA). The EFMLA is a provision of the Families First Coronavirus Response Act (FFCRA), effective April 1, 2020 through December 31, 2020.

The leave provisions of the FFCRA are only for those employees who cannot work, including work-from-home, as a result of COVID-19. The SC Technical College System (SCTCS) is committed to offering work-from-home opportunities to employees to the maximum extent possible and to offer the paid leave available under the FFCRA only if work-from-home opportunities have been exhausted.

I. Eligibility for EFMLA leave

Emergency Family and Medical Leave Expansion Act (EFMLA) leave shall be granted to any employee who has been employed with the State at least thirty (30) calendar days. An employee is considered to have been employed for thirty (30) calendar days if the employee has been on payroll with the State for the thirty (30) calendar days immediately prior to the day the leave would begin. This does not necessarily mean that the employee has actually worked thirty (30) calendar days. This includes employees in non-FTE and non-leave accruing positions. Unlike the other provisions of the FMLA, there are no hours worked requirements for eligibility, and employees are not required to work the normal 12-month period for leave taken pursuant to the EFMLA. If the employee worked as a temporary, time-limited or temporary grant employee and was then transitioned to an FTE position, the total time worked in both positions should be added to determine if the 30-day timeframe has been met.

An employer may elect to exclude a health care provider or emergency responder from taking EFMLA.

II. Reasons for granting of EFMLA leave

The EFMLA amends and expands the federal Family and Medical Leave Act (FMLA), on a temporary basis, to provide qualifying employees 12 weeks of leave if the employee is unable to work, including work-from-home for the reasons identified in subparagraphs A and B below. Employees are limited to a combined total of 12 weeks of leave taken under the EFMLA and FMLA during a calendar year. If an employee has already taken 12 workweeks of FMLA leave during the applicable 12-month period, the employee may not take additional leave under the EFMLA.

- A. Need to care for the employee's child (under 18 years of age) if the child's school or place of care is closed;
- B. The childcare provider is unavailable due to a public health emergency. A public health emergency is "an emergency with respect to COVID-19 declared by a Federal, State, or local authority."

III. Definitions

- A. SCHOOL – any elementary or secondary school.
- B. PLACE OF CARE – any provider who receives compensation for providing childcare services.
- C. CHILD CARE PROVIDER – includes a center based childcare provider, a group home childcare provider, a family childcare provider, or other provider of childcare services. In addition, FFCRA does not require that a childcare provider be compensated or licensed to meet the definition of childcare provider if they are a family member or friend, such as a neighbor, who regularly cares for the employee's child.
- D. HEALTH CARE PROVIDER – anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

IV. Scheduling FMLA Leave

In any case where the necessity for leave under the EFMLA is foreseeable, an employee shall provide as much notice as is practicable.

V. Certification

The normal FMLA certification process is not required for leave taken under the EFMLA. The System Office/College may request documentation of closure of the school or childcare provider, but will be flexible in the documentation accepted. For example, a printout or screen shot from a school or provider website indicating closure related to COVID-19 will be accepted.

VI. Use of Paid and Unpaid Leave

The first 10 workdays of the 12 workweeks of leave provided under the EFMLA are unpaid. However, Emergency Paid Sick Leave, another provision of the FFCRA, may be requested and would provide an eligible employee two-thirds pay during the first 10 workdays of the EFMLA. Additionally, in accordance with standard FMLA administration, an eligible employee may elect to use accrued paid leave to run concurrently with the 10-day "unpaid" EFMLA period.

- A. After the first 10 workdays, paid leave must be provided for the remaining leave taken under the EFMLA. This includes leave taken by employees who do not currently earn leave including temporary, temporary grant and time-limited employees.
- B. Under the provisions of the EFMLA, an employee will be paid for hours the employee would have normally been scheduled to work, even if that is more than 40 hours in a week. Pay does not include a premium for overtime.
- C. The paid leave provided to eligible employees shall be calculated at two-thirds of an employee's regular rate of pay and should be based on the number of hours the employee

would otherwise be normally scheduled to work. Paid leave under the EFMLA is capped at \$200 per day and \$10,000 in the aggregate.

- D. Employees can use any accrued leave to supplement leave taken under the provisions of the EFMLA, up to their regular rate of pay.
- E. Paid leave under the EFMLA does not carry over from year to year and leave must be used April 1 – December 31, 2020.

VII. Intermittent EFMLA Leave and Reduced Schedule

EFMLA leave may be taken on an intermittent basis.

VIII. Maintenance of Insurance Benefits

The System Office/College will maintain group health insurance coverage for an employee on EFMLA 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.

While on EFMLA, the employee's portion of the insurance premiums will continue to be deducted from the pay due to the employee.

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

IX. EFMLA Leave Record

A leave record shall be maintained by the human resource office for each employee covered under the provisions of the EFMLA.

Such record shall:

- A. Reflect the maximum EFMLA leave allowance (12 week/480 hours in a calendar year) and charges in terms of hours.
- B. Indicate the sum of EFMLA and 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.

X. Reinstatement from EFMLA Leave

On return from EFMLA leave, an employee is entitled to be returned to the same position the employee held when the EFMLA 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.

XI. 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 leave records to the receiving agency, including the amount of EFMLA the employee has exhausted in the current calendar year.