

Family and Medical Leave Act

Graduate Medical Education/ Resident Program

THIS IS NOT A CONTRACT OF EMPLOYMENT AND SHOULD NOT BE RELIED UPON AS SUCH. THIS POLICY MAY BE CHANGED AT ANY TIME BY THE MEDICAL UNIVERSITY OF SOUTH CAROLINA.

I. POLICY

The Family and Medical Leave Act of 1993 (FMLA) provides **eligible** Residents up to 12 weeks (480 hours) of unpaid leave each **calendar** year for birth, adoption, or foster care of a child; to care for an immediate family member with a serious health condition; and for an employee to attend to his/her own serious health condition. Employers are required to maintain any pre-existing health coverage during the leave period, and once the leave period is concluded, to reinstate the employee to the same or equivalent job.

- A. **Full-time eligible** Residents are entitled to 12 weeks (480 hours) of FMLA leave per **calendar** year.
- B. **Part-time eligible** Residents are entitled to 12 weeks of prorated leave per **calendar** year based on the total number of hours established to work. (i.e., An employee established to work 30 hours a week is entitled to 360 hours of FMLA leave [30 hours/week x 12 weeks = 360 hours]).

II. INFORMATION AND PROCEDURES

- A. Eligibility
 - 1. FMLA leave may be granted to any employee who has worked for the State of South Carolina for at least twelve (12) months and has **worked** at least 1250 hours (defined as Fair Labor Standards Act [FLSA] compensable hours of work) during the twelve (12) month period **preceding** the request for FMLA leave.
 - a. All South Carolina state agencies are considered a single employer for the purpose of determining FMLA leave eligibility
 - b. Exempt employees are presumed to have met the 1250 hours of service unless otherwise indicated by work records kept on file.
- B. Reasons for Using FMLA Leave
 - 1. The birth of a child and to care for that child;
 - 2. Placement of a child for adoption or foster care with the employee or to care for the child after placement;
 - 3. To care for the employee's spouse, child or parent with a serious health condition; and,
 - 4. A serious health condition that renders the employee unable to work and/or perform the essential functions of the employee's job.

Note: Eligibility for reasons 1 and 2 expires twelve (12) months after the date of the birth or placement of a child.

C. Definitions

1. **Spouse** is a husband or wife as defined or recognized under state law for purposes of marriage, including a common law marriage in states where it is recognized. South Carolina recognizes common law marriages.
2. **Child** is a biological, adopted, or foster child, stepchild, legal ward or a child of a person standing *in loco parentis* who is either under the age of 18 or who is 18 or older and incapable of self-care because of a mental or physical disability.
3. **Parent** is a biological or adoptive parent or an individual who stands or stood *in loco parentis* to the employee when the employee was a child. Parents-in-law are not included.
4. **Health care providers** are: (1) a doctor of medicine or osteopathy; (2) a podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to treatment consisting of spine manipulation unless the employer's group health plan accepts claims of benefits to other health conditions); (3) a nurse practitioner, nurse-midwife; or clinical social worker (authorized under state law and who are performing within the scope of their license); or, (4) a Christian Science practitioner. A manager or supervisor can require a second opinion.
5. **Serious or chronic health condition** is an illness, injury, impairment, or physical or mental condition that involves:
 - a. Any period of incapacity or treatment in connection with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or,
 - b. Any period of incapacity requiring an absence from work, school, or other regular daily activities of more than three consecutive **calendar** days, that also involves continuing treatment by (or under the supervision of) a health care provider; or,
 - c. Any period of incapacity due to pregnancy, or for prenatal care; or,
 - d. 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 (3) **calendar** days.
6. **Continuing Treatment:** two (2) or more visits, or two (2) or more treatments by a health care provider; a single visit to a health provider that results in a regimen of treatment under the supervision of a health care provider.

7. **Needed to care for:** because of a serious health condition an employee is "needed to care for" a family member who is unable to care for his/her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself/herself to a health care provider.
 - a. Includes providing psychological comfort and reassurance to a covered family member receiving inpatient or home care.
 - b. Includes filling in for others who routinely care for the covered family member or making arrangements for changes in care.
- D. Health and Dental Coverage
 1. Health and dental coverage shall be maintained on an **eligible** employee during any FMLA leave period.
 2. Residents must continue to pay the employee's portion of health and dental insurance premiums even when in an FMLA leave of absence without pay status.
- E. Scheduling FMLA Leave
 1. An **eligible** Resident requesting FMLA leave should give thirty (30) days advance notice to the supervisor/manager when the need for the leave is foreseeable.
 2. When the need for the leave is not foreseeable, such notice must be given as soon as practical.
 3. When planning medical treatment, every effort should be made to schedule leave so as not to disrupt a department's operation.
 4. The use of FMLA leave shall be subject to verification. An employee's request for FMLA leave to care for a seriously ill spouse, child or parent, or due to the Resident's own serious health condition, **must** be supported by certification issued by the health care provider.
- F. Medical Certification
 1. All medical documents must be kept separate from Human Resources personnel files.
 2. Residents requesting FMLA leave shall furnish a medical certification form from the health care provider within fifteen (15) days of a request from the supervisor/manager.
 3. Recertification at any reasonable interval, but not more often than every thirty (30) days unless:
 - a. The employee requests an extension of leave;
 - b. Circumstances described by the original certification change significantly;
 - c. The supervisor/manager receives information that casts doubt upon the continuing validity of the certification; or
 - d. When an employee is unable to return to work after FMLA leave.

4. A second and, if necessary, third medical opinion and will be responsible for any charges incurred by the requests.
 - a. Leave does not have to be granted if the second and third opinions say the employee does not need time off from work.
 - b. The supervisor/manager may choose the health care provider for the second opinion.
 - c. The supervisor/manager and employee must agree on the health care provider for the third opinion.
 - d. The third opinion shall be final and binding.

G. Birth/Adoption/Foster Care

1. FMLA leave for the birth of a baby may begin prior to the birth for prenatal care, or if the expectant mother's health condition renders her unable to work.
2. FMLA leave may begin before the actual placement for adoption of a child if an absence from work is required for counseling sessions, court appearances, lawyer visits, etc.
3. Annual leave or leave without pay shall be used for the purpose of foster care.

H. Spouses Employed By The Same Employer

1. Spouses employed by MUSC or another State agency **are limited** to a combined total of 12 weeks or 480 hours (prorated for part-time employees) of FMLA leave per **calendar** year for the birth or adoption of a child or the placement of a foster care child.
2. Spouses employed by MUSC or another State agency **are not limited** to a combined total of 12 weeks or 480 hours (prorated for part-time employees) to care for themselves, spouses, and/or children due to a serious health condition.

I. Declaring FMLA Leave For Eligible Employees

1. It is the **Program Coordinator's responsibility** to declare absences as FMLA leave based on information provided by the employee.
2. The supervisor/manager may verbally declare an absence as FMLA leave (pending eligibility) within two (2) business days upon determining that the leave qualifies as FMLA leave.
3. The **Program Coordinator must confirm in writing** to the **eligible** employee, **within three calendar days**, that the leave requested has been designated as FMLA leave.
4. FMLA leave **may not be declared retroactively** if the **Program Coordinator** fails to declare in writing the leave as FMLA prior to the **eligible** employee beginning the leave, or at the time the supervisor/manager has sufficient information to make a determination that the leave is for an FMLA reason.
5. An **eligible** employee who uses leave for an FMLA reason and whose supervisor/manager has not declared in writing the absence as FMLA leave is protected under the law, but the time used **may not** be deducted from the employee's twelve (12) week entitlement.

6. An **eligible** employee's FMLA leave allowance shall be charged for the actual time an employee is away from the job.
- J. Declaring Employees Ineligible For FMLA Leave
1. It is the **Program Coordinator's responsibility** to declare an employee ineligible for FMLA leave if the employee does not meet the eligibility requirements described in section II. A. of this policy.
 2. The **Program Coordinator** must inform the employee verbally within two (2) business days of receiving the employee's request for leave that the employee does not qualify for FMLA leave.
 3. The **Program Coordinator must confirm in writing** to the ineligible employee that the leave requested has been denied due to the employee not meeting the eligibility requirements of FMLA.
 4. A Resident who requests or uses leave for a qualifying FMLA reason will be considered eligible for FMLA leave and protected under the provisions of the law if the **Program Coordinator** does not comply with the above procedures.
- K. Use of Paid and Unpaid Leave
1. An **eligible** Resident who is unable to work due to a serious health condition is required to use all accrued sick leave before requesting annual leave or leave without pay.
 2. An **eligible** Resident who is unable to work due to the serious health condition of a spouse, child, or parent is required to use all available sick leave (before requesting annual leave or leave without pay.
 3. FMLA leave shall run concurrently with other leave and all leave taken shall be charged against appropriate leave balances.
- L. Intermittent or Reduced Schedule Leave
1. Whenever **medically necessary** Residents are entitled to intermittent or reduced schedule leave to care for a seriously ill family member or because of the employee's own serious health condition.
 2. Intermittent or reduced schedule leave may be taken for the birth of a child, or placement for adoption or foster care of a child with the employer's approval.
 - a. **Intermittent leave** is medical leave taken in separate blocks of time and may include periods from one (1) hour or less to several weeks at a time.
 - b. **Reduced schedule leave** reduces an employee's work hours per day/week to a number fewer than the employee's normal work schedule.
- M. Reinstatement from FMLA Leave
- An eligible employee who takes FMLA leave is entitled to be restored to the same position the employee held when the leave started or to an equivalent position with like benefits, pay, and other terms and conditions of employment.

EMPLOYER'S RIGHT TO REFUSE LEAVE OR REINSTATEMENT

- N. FMLA leave or reinstatement to **eligible** Residents:
 - 1. If a Resident fails to provide the requested medical certification within the specified time frame;
 - 2. If a Resident fails to provide a requested statement from the health care provider stating the employee is fit to return to work; and,
 - 3. If an employee unequivocally advises the supervisor/manager, in writing, that he/she does not intend to return to work.
- O. A Resident has no right to benefits and conditions of employment greater than he/she had prior to FMLA leave.
- P. Any Resident who fraudulently obtains FMLA leave is not protected by FMLA's job restoration or maintenance of health/dental benefits provisions and may be subject to disciplinary actions up to and including termination.

FMLA LEAVE RECORDS

- Q. FMLA leave records must be kept separate from employee personnel files.
- R. Records will be maintained in the home department for four calendar years, for each employee covered under the provisions of the FMLA. The following documentation should be available upon request:
 - 1. All memoranda or letters sent to employees declaring the use of FMLA;
 - 2. Completed medical certification forms;
 - 3. Leave request forms;
 - 4. The number of FMLA leave hours each employee is **eligible** for each **calendar** year;
 - 5. The number of hours in each employee's official work week.

TRANSFER OF FMLA LEAVE

- S. Reassignments between departments will not change FMLA leave availability.
- T. When transferring to or from another state agency, total FMLA leave used for the current calendar year may be transferred.
- U. When transferring to or from a temporary grant position, FMLA leave eligibility will not change.

The Family and Medical Leave Act makes it unlawful for any supervisor/manager to interfere with, restrain, or deny the exercise of any right provided under this federal law.

All personnel acting, directly and indirectly, in the interest of the Medical University of South Carolina can be held personally liable for failure to adhere to the guidelines of the Family and Medical Leave Act.