

COLLEGE of CHARLESTON

OFFICIAL POLICY

9.3.1

Family and Medical Leave Act

10/5/2020

Policy Statement

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

Policy Manager and Responsible Department or Office

Human Resources

Policy

1.0 Purpose

The College has established this Policy to comply with the provisions of the Family and Medical Leave Act ("FMLA"), which provides eligible employees with a specified amount of unpaid, job-protected leave for certain family and medical reasons. This Policy highlights and summarizes the rights and responsibilities of eligible employees and the College.

2.0 Policy

A. Eligibility

An employee of the College is eligible for leave under the FMLA if such employee: (1) has worked for the State of South Carolina at least 12 months, not necessarily consecutively; (2) has worked at least 1250 hours during the 12 months immediately prior to commencement of the leave; and (3) is employed at a work site where 50 or more employees are employed by the employer within a 75 mile radius of that work site. State government is considered to be a single employer for the purpose of determining FMLA leave eligibility.

B. Basic Leave and Military Family Leave Provisions

1. An eligible employee shall be granted up to a total of 12 work weeks of FMLA leave in each calendar year (equates to 60 workdays as follows: 450 hours for employees who work 7.5 hours; or 480 hours for employees who work 8 hours per day), for any of the following reasons:

- (a) Birth of a child and to care for the newborn child of employee, or placement of a child for adoption or foster care with employee (Note: eligibility expires 12 months after the date of birth, adoption or placement);
or
- (b) Serious health condition of a spouse, child or parent of the employee;
or
- (c) Serious health condition of the employee; or
- (d) Qualifying exigencies that arise while a covered service member (who is the employee's spouse, child or parent) is on covered active duty, called to covered active duty or has been notified of an impending call or order to covered active duty in the Armed Forces.

2. An eligible employee who is the spouse, child, parent or next of kin of a covered current member or covered veteran of the Armed Forces, including a member of the National Guard or Reserves, shall be granted up to a total of 26 work weeks of military caregiver FMLA leave during a single 12-month period to care for the covered service member who has a serious injury or illness.

C. Definitions

1. **Serious health condition** is defined as:

- (a) 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
- (b) Continuing treatment by a healthcare provider, which includes the following:
 - (1) a period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition;
 - (2) any period of incapacity related to pregnancy or for prenatal care;

- (3) any period of incapacity or treatment for chronic serious health condition which continues over an extended period of time, requires periodic visits to a healthcare provider (at least twice a year), and may involve occasional episodes of incapacity. Note: A visit to a healthcare provider is not necessary for each absence;
- (4) 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
- (5) any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

2. **The 12-month period** under South Carolina State Government is a calendar year.

3. **Spouse** means husband or wife as defined or recognized in the State where the employee resides. This includes common-law marriage in states where common-law marriages are recognized.

4. **Parent** means biological parent or a non-biological parent who had primary responsibility for raising the employee as a child in loco parentis. The term does not include parents "in-law".

5. **Child** means biological, adopted, or foster child, a stepchild, legal ward or a child being raised by the employee in-loco parentis. The child must be either under 18 years of age or older than 18 and incapable of self-care because of a physical or mental disability.

6. Incapable of self-care means that the individual requires active assistance to provide daily self-care of three or more daily activities such as grooming, hygiene, bathing, dressing and eating.

7. Physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities.

8. Qualifying exigency means one of the following: (1) short-notice deployment, (2) military events and related activities, (3) child care and school activities, (4) financial activities and legal activities, (5) counseling, (6) rest and recuperation, (7) post-deployment activities, (8) parental leave and (9) additional activities that arise out of covered active duty or call to covered active duty, provided that the employer and employee agree on the need, timing and duration of the leave.

9. Next of kin means the closest blood relative of the injured or recovering service member.

10. Healthcare provider is a doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse midwife, Christian Science practitioner, or clinical social worker performing within the scope of their practice. This may also include other providers as defined by the U.S. Department of Labor.

11. Covered Service Member means either: (1) a current member of the Armed Forces, including the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (2) a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

12 **Covered Veteran** means a covered service member who was released or discharged under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes leave to care for the veteran.

13. **Serious injury or illness** means: (1) in the case of a current service member, an injury or illness incurred in the line of active duty or that was aggravated by service in the

line of active duty and that may render the service member unfit to perform the duties of the member's office, grade, rank or rating; and (2), in the case of a veteran, an injury or illness incurred in the line of active duty or that was aggravated by service in the line of active duty, that manifested itself before or after the member became a veteran and is a covered condition or continuing condition as set forth in the federal FMLA regulations.

D. Requesting FMLA Leave

1. An employee requesting FMLA leave must, when foreseeable, give 30-days advance notice to the College of the need to take FMLA leave. When 30 days is not possible, the employee must provide notice as soon as practicable and must comply with the College's normal call-in procedures.
2. Requests for FMLA leave are to be submitted in writing to the College's Office of Human Resources, with supporting certification as to health conditions from medical providers.
3. If a request for FMLA leave is denied for any reason, notice of the denial will be provided to the requesting employee. This denial of the request will be made in a timely manner. The notification will be provided in writing and will include the reason for denial.
4. FMLA leave policies and procedures will be applied in an equitable manner to all eligible employees. In instances of a determination of FMLA leave abuse or violation of policy, the respective supervisor (department heads or authorized supervisors) may take disciplinary action in accordance with College policy and only following consultation with the Office of Human Resources.

E. Certification of FMLA Leave

1. Employees will be required to provide complete and sufficient medical certification from a health care provider to support a request for FMLA leave for the serious health condition of an employee or an employee's family member. The College will provide employees with the necessary certification forms. The certification will include the date on which the condition commenced, the probable duration of the condition and appropriate medical facts within the health care provider's knowledge regarding the condition, among additional information. The certification must also include an estimate of the amount of time that the eligible employee needs if the FMLA leave is requested to care for covered family member as defined in this Policy.
2. It is the employee's responsibility to have the form completed and returned to the College within 15 days of receipt of the form.
3. An employee's failure to present a required certification may result in denial of request for family medical leave.
4. The College may require that a second medical opinion be obtained at the College's expense. In cases where the second opinion conflicts with the original opinion, a third opinion may be required. The Office of Human Resources must be consulted for procedural guidance prior requesting second or third opinions.
5. The College may require recertification from the employee, except for in the case of leave to care for a covered service member.
6. The College may also require an employee to present satisfactory proof of an adoption or placement for foster care.
7. In the case where the employee is on FMLA leave for himself/herself, the employee will

be required to present a physician's release in order to return to work.

8. In the case of either qualifying exigency or military caregiver leave, the employee may be required to provide documentation or statement of family relationship (e.g., birth certificate or court document), certain military documentation and a proper certification related to the need for leave.

9. FMLA leave or return to work may be delayed or denied if appropriate, complete and sufficient documentation is not provided in a timely manner. Also, a failure to provide requested documentation of the reason for an absence from work may lead to termination of employment.

F. Declaration and Charging of FMLA Leave

1. It is the College's responsibility to declare leave as FMLA leave based on the information provided by the employee and the health care certification form. It is important that the manager or supervisor notify the Office of Human Resources immediately if an employee's absence is or is believed to be due to one of the FMLA qualifying reasons. If there is any doubt as to whether or not the absence qualifies as FMLA leave, the Office of Human Resources should be contacted to make the declaration. When FMLA leave is declared, the Office of Human Resources must notify the employee of such declaration. A declaration notice will be delivered in writing to the employee.

2. When both spouses are employed by the College or another South Carolina State Agency, they are jointly entitled to a combined total of 12 weeks of FMLA leave for the birth or placement of a child for adoption or foster care. For military caregiver leave, the employee and the employee's spouse may be limited to a combined

3. If an employee was absent for an FMLA-eligible reason and the College did not learn the reason for the absence until after or upon the employee's return, with appropriate documentation, the College may designate the leave retroactively with appropriate notice to the employee. It is imperative for the manager or supervisor to contact the Office of Human Resources when there are questions regarding qualifying reasons for FMLA absences.

4. Sick Leave – to remain in paid status, employees who earn sick leave must use their accrued sick leave for FMLA leave when the employee is out for their own serious health condition that renders them unable to perform their job. The use of paid sick leave while on FMLA leave runs concurrently and will not extend the 12-week maximum coverage for FMLA leave.

5. Sick Leave for Absence Related to a Covered Family Member - in any calendar year, employees who earn sick leave may use up to 10 days of their available sick leave for FMLA leave to care for a spouse, child or parent with a serious health condition.

6. Annual Leave - employees who earn annual leave may use their annual leave hours when the purpose of the leave is to care for a spouse, child or parent with a serious health condition. Employees may use their annual leave once their available sick leave options as noted above have been exhausted. The use of paid annual leave while on FMLA leave runs concurrently and will not extend the 12-week maximum coverage for FMLA leave.

7. Leave Without Pay - employees will be placed on leave without pay after using all other available paid leave options. The time spent by employees on unpaid FMLA leave will not count as time worked for the purpose of accruing annual and/or sick leave.

G. Intermittent FMLA Leave/ Reduced Leave Schedule

1. Under certain circumstances by following the healthcare certification form, employees

may take FMLA leave intermittently by taking leave in blocks of time, or by reducing the normal weekly or daily work schedule.

2. Eligible employees make take intermittent or reduced schedule leave when medically necessary based on the serious health condition of the employee, a covered family member or the serious injury or illness of a covered service member or for a qualifying exigency. In certain instances, alternative job options may be explored to further assist the employee.

3. Employees eligible for intermittent or reduced schedule leave must make reasonable efforts to schedule leave for planned medical treatments in a manner that does not unduly disrupt the College's operations.

4. FMLA leave may not be taken intermittently for the birth or placement of a child unless the employee's immediate supervisor and the Office of Human Resources agree otherwise.

H. Continuation of Insurance Benefits

The College will maintain group 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 timely paying the employee portion of the insurance premiums. If the employee is out longer than the FMLA leave entitlement period, the employee will be responsible for paying both the College's portion in addition to their own premiums if the employee wishes to keep the insurance in force, to the extent continued coverage is allowed under the terms and conditions of the insurance plan. Under certain circumstances, where the employee fails to return to work following the exhaustion or expiration of FMLA leave entitlements, the employee may be required to repay the employer's portion of the insurance premiums applied for any period of unpaid leave.

I. Reinstatement from FMLA Leave

1. The employee must provide a physician's release upon their return to work following absences related to the employee's own serious health condition.

2. Upon returning from approved FMLA leave, with certain exceptions set forth in the FMLA, the employee is entitled to be reinstated 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.

J. FMLA Leave Records

1. The Office of Human Resources will maintain a leave record for each employee covered under the provisions of FMLA.

2. FMLA records and documents relating to medical certification, recertification and medical histories shall be maintained as confidential medical records and kept separate from employee personnel files.

K. Transfer of FMLA Leave Records

For eligible employees who transfer from one South Carolina State Agency to another, the transferring Agency is responsible for transferring the employee's FMLA leave records in that calendar year to the receiving Agency.

Departments/Offices Affected by the Policy

--

Procedures Related to the Policy

--

Related Policies, Documents or Forms

--

Issue Date:6/16/2014 Date of Policy Review: 10/5/2020
--

Next Review Date:10/8/2025

POLICY APPROVAL

(For use by the Office of the Board of Trustees or the Office of the President)

Policy Number: 9.3.1

President or
Chairman, Board of
Trustees



Date: 10/5/2020