



## **HUMAN RESOURCES MANAGEMENT POLICY**

### **FAMILY AND MEDICAL LEAVE**

#### **Policy 30**

---

**NOTE:** THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE MEDICAL UNIVERSITY OF SOUTH CAROLINA (MUSC). MUSC 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**

At MUSC, we strive to create an academic healthcare community where every member is respected and valued. We believe in the strength of a diverse and inclusive workforce, where differences provide us the unique ability to change what's possible in patient care, research and education.

#### **I. THE FAMILY MEDICAL LEAVE ACT IN BRIEF**

The Family and Medical Leave Act of 1993 (FMLA) provides eligible employees up to 12 weeks (480 hours) of job protection and unpaid leave in a 12 month calendar year for the following medical and family reasons:

- A.** The birth of a son or daughter and to care for that child;
- B.** The placement of a son or daughter for adoption or foster care with the employee;
- C.** To care for a member of the employee's immediate family (i.e. spouse, son, daughter, or parent) with a serious health condition (does not include a parent "in-law");
- D.** A serious health condition of the employee that renders him/her unable to perform the functions of his/her job.
- E.** For specific military provisions.

Note: Eligibility for reasons A and B expire 12 months after the date of the birth or placement of the child.

Employers are required to maintain any pre-existing health coverage during the leave period, and with a few limited exceptions, the employer must reinstate the employee to the original position or an equivalent position once the leave period is concluded.

In January of 2008, the FMLA was amended to include special provisions for members and immediate family members of the United States armed forces. This amendment is included in Section VII of this document.

The FMLA is administered by the Employment Standards Administration's Wage and Hour Division within the U.S. Department of Labor.

Employees who are on an approved leave of absence may not engage in any form of self-employment or perform work for any other employer during that leave, except when the leave is for military or public service or when the employment has been approved by the Department of Human Resources Management and Legal Counsel.

Please refer to Appendix I for definitions of terms used in this policy.

## **II. ELIGIBILITY**

It is the responsibility of each supervisor/manager to ensure that eligible employees are granted FMLA leave for FMLA protected health conditions. Under this Federal law, supervisors/managers can be held personally liable for violating employees' FMLA rights.

### **A. The FMLA contains three prerequisites to employee eligibility**

1. The employee must be employed for at least 12 months by the employer from whom the leave is requested.
  - a. All South Carolina agencies are considered a single employer for the purpose of determining FMLA leave eligibility.
  - b. MUSC employees previously employed by Medical University Hospital Authority (MUHA), Medical University Physicians (former known as University Medical Associates (UMA) and other affiliated agencies may be considered for eligibility under the "joint employment" principle.
2. The employee must have at least 1,250 hours of on-the-job service with the employer during the 12 month period immediately preceding the first day of the leave. Exempt employees are presumed to have met the 1,250 hours of on-the-job service unless otherwise indicated by work records kept on file. The rules set by the Fair Labor Standards Act (FLSA) on compensable hours are used to determine whether an employee meets the hours of service requirement. (Weekends, holidays, annual leave and sick leave taken are not counted as "hours of service" for FMLA eligibility determination.)
3. The employee must be employed at a work site at which the employer employs at least 50 employees within 75 miles.

Full-time eligible employees are entitled to 12 weeks (480 hours) of unpaid FMLA leave during a calendar year. Part-time eligible employees are entitled to 12 weeks of pro-rated unpaid FMLA leave during a calendar year based on the total number of hours established to work. (e.g., An eligible employee established to work 30 hours per week is entitled to 360 hours of unpaid FMLA leave [30 hours/week x 12 weeks = 360 hours]).

**Note:** The Department of Labor (DOL) has issued an exception for employees with immediate family members in the military. Please refer to Section VII in this policy, in addition to HRM Policy no. 22, "Military Leave."

#### **B. Declaring Employees Ineligible for FMLA Leave**

It is the supervisor's/manager'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.

1. The supervisor/manager 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.
2. The supervisor/manager 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. This must occur no later than the employee's next pay day (unless the pay day is less than one (1) week after the oral notice, in which case the written notice must be no later than the subsequent pay day).
3. If the supervisor/manager does not comply with the above procedures, an ineligible employee 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.
4. If an employee fails to provide notice of the need for leave more than five business days prior to beginning the leave, the employee will be deemed eligible if the manager/supervisor fails to advise the employee that he or she is not eligible within five business days of receiving the employee's notice.

#### **C. Intermittent or Reduced Schedule Leave**

1. 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.
2. Whenever medically necessary, eligible employees are entitled to intermittent or reduced schedule leave to care for a seriously ill immediate family member or because of the employee's own serious health condition.
3. 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.

4. Leave begins on the date of the first absence. Subsequent absences for the same condition within the relevant calendar year do not constitute new “leaves” for which eligibility must be re-established. (Once the applicable 12-month period expires, however, a new leave period begins and eligibility may be re-evaluated.)

**D. 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.

**E. Employer’s Right to Refuse Leave or Reinstatement**

1. Supervisors/managers may refuse to provide FMLA leave or reinstatement to eligible employees:
  - a. If an employee fails to provide the requested medical certification within the specified time frame;
  - b. If an employee fails to provide a requested statement from the health care provider stating the employee is fit to return to work; and/or,
  - c. If an employee unequivocally advises the supervisor/manager, in writing, that he/she does not intend to return to work.
2. An employee has no right to benefits and conditions of employment greater than he/she had prior to FMLA leave.
3. An employee 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.

**III. INFORMATION AND PROCEDURES**

**A. FMLA Notification Guidelines – Employee Responsibility**

1. An eligible employee who anticipates going on FMLA leave must give a minimum of 30 days advance notice to his or her supervisor/manager when the need for leave is foreseeable. When the need for leave is not foreseeable, such notice must be given as soon as is practical.
2. When planning medical treatment, every effort should be made to schedule leave so as not to disrupt a department’s operation.
3. The use of FMLA leave shall be subject to verification. MUSC requires that an employee’s request for FMLA leave be supported by a certification or other verification issued by the employee’s health care practitioner or by his/her family member’s health care practitioner in the event that the leave is requested to care for a seriously ill spouse, parent, or child.

4. Prior to returning to work from FMLA leave, an employee must provide documentation from his/her health provider that he/she may return to work.

**B. FMLA Notification Guidelines – Supervisor/Manager Responsibility**

1. FMLA regulations state that it is the supervisor/manager'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 supervisor/manager must confirm in writing to the eligible employee that the leave requested has been designated as FMLA leave. This must occur no later than the employee's next pay day (unless the pay day is less than one [1] week after the oral notice, in which case the written notice must be no later than the subsequent pay day).
4. A supervisor/manager may not declare FMLA leave retroactively, if the supervisor/manager 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, and the time used may not be deducted from the employee's 12 week entitlement.
6. Once the supervisor/manager confirms eligibility in response to a request for FMLA leave, she/he cannot later challenge the employee's eligibility.
7. An eligible employee's FMLA leave allowance shall be charged for the actual time an employee is away from the job.

**C. Use of Paid and Unpaid Leave**

1. An eligible employee who is unable to work due to a serious health condition is **required** to use all accrued sick leave before requesting to use annual leave or leave without pay.
2. An eligible employee who is unable to work due to the serious health condition of a spouse, child, or parent is required to use all available family sick leave (10 days [80 hours] per calendar year) before using annual leave or leave without pay. (Except for the 10 days mentioned above, an eligible employee may not use his/her own personal available sick leave to care for a spouse, child, or parent.)

3. FMLA leave shall run concurrently with other leave and all leave taken shall be charged against appropriate leave balances.
4. FMLA leave will be charged to employees by proper reporting in the Kronos timekeeping system and/or monthly time summaries for the actual time employees are away from the job. As a reminder, copies of Kronos reports and monthly time summaries must be retained in the employee's department.

**D. Health and Dental Coverage**

1. Health and dental coverage shall be maintained on an eligible employee during any FMLA leave period.
2. Employees 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.

**DI. Medical Certification**

1. All medical documents must be kept separate from employee personnel files and retained by the department in a restricted area.
2. Employees 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. A supervisor/manager may request 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. The supervisor/manager has a right to request a second and, if necessary, third medical opinion and the supervisor/manager's department 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 (or additional 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.

**F. 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, and for her own serious health condition following the birth of the child.
- 2. FMLA may be used for prenatal and/or postnatal care (e.g. prenatal doctor visits; physician-mandated bed rest prior to birth; serious health condition of new mother resulting from giving birth; time to bond with newborn, etc.).
- 3. 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.
- 4. Annual leave or leave without pay shall be used for the purpose of foster care.
- 5. Up to 80.0 hours of Sick Leave may be used for the care of the child, per MUSC Human Resources Management Policy No. 19, Sick Leave. Additional time, should be taken as Annual Leave or Leave without Pay.
- 6. The use of sick leave for birth or adoption is addressed in the Human Resources Management Policy No. 19, Sick Leave.

**G. Spouses Employed by the Same Employer**

- 1. Spouses employed by MUSC or another SC 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 SC 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.

**IV. FMLA LEAVE RECORDS**

It is imperative that all FMLA leave is accurately reported in the Kronos time keeping system for nonexempt (biweekly paid) employees and on the monthly time summaries for exempt (monthly paid) employees.

- A.** Each department is responsible for maintaining records of employees' FMLA eligibility, letters declaring employees on FMLA and FMLA leave usage. FMLA leave records must be kept in a restricted area within the department, separate from employee personnel files.

- B.** Health records (including FMLA letters and certification forms) must not be kept in employee personnel files; they must be kept in a separate location by the department. These records must be kept current and on file for four (4) years.
- C.** In the event that HRM, MUSC's Internal Auditor, state and federal authorities, and/or the Payroll Department requests copies of leave records for each employee covered under the provisions of the FMLA, supervisors/managers must make available:
  - 1. Copies of all memoranda or letters sent to employees declaring the use of FMLA and FMLA eligibility;
  - 2. FMLA Certification forms completed and signed by the authorized Healthcare Providers;
  - 3. Copies of leave request forms; and,
  - 4. Copies of time summaries or time cards, if applicable, with exact FMLA hours clearly noted;
  - 5. Leave Request forms signed by employees and supervisors/managers.
- D.** In addition to the information above, it is required by federal law to record and maintain all required information to include:
  - 1. The number of FMLA leave hours each employee is eligible for in the current calendar year;
  - 2. The total number of FMLA leave hours (designated as sick leave, annual leave, holiday leave or leave without pay) used by each employee in the current calendar year and previous years; and,
  - 3. The number of hours in each employee's official work week.

**V. TRANSFER OF FMLA LEAVE**

- A.** Reassignments between departments will not change FMLA leave availability for eligible employees.
- B.** When transferring to or from another state agency, total FMLA leave used for the current calendar year may be transferred. It is the responsibility of the agency from which the FMLA leave originated to notify and provide appropriate documentation to the agency to which the employee transferred.
- C.** When transferring to or from a temporary grant position, FMLA leave eligibility will not change.

**VI. SPECIAL PROVISIONS FOR MILITARY FMLA**

On January 28, 2008, President Bush signed into law a new provision under the FMLA that in certain circumstances permits a "spouse, son, daughter, parent, **or next of kin**" to take up to 26 workweeks of leave to care leave to care for a "member of the Armed Forces, including a member of 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."

**A. Active Duty Family Leave**

1. If an employee is the spouse, parent, or child of a service member who is on active duty, or who has been notified of an impending call or order to active duty in the Armed Forces (including the Reserves and National Guard) and deployed to a foreign country, she/he may be eligible for up to 12 weeks of unpaid FMLA leave due to a qualifying "exigency" to a *foreign country*
  - a. Qualifying "exigencies" should be limited to non-medical related exigencies, such as childcare arrangements, etc;
  - b. Qualified "exigency" covers only foreign deployment;
  - c. Typically short notice of deployment is seven (7) days or less;
  - d. There must be a nexus between the need for FMLA leave and active military duty;
  - e. Not every exigency will entitle a military family member to FMLA leave.

**B. Injured Service Member Leave**

1. If the employee is a spouse, parent, child, or next of kin of a service member undergoing medical treatment, recuperation, or therapy, or is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness incurred while on active duty, the employee may be eligible for up to 26 weeks of unpaid FMLA leave.
2. Qualifying employees may be entitled to take up to 26 weeks of leave, including traditional FMLA leave and active duty family leave, over a single twelve month period.
3. The provision of 26 weeks' leave may be granted one time only.

**C. Eligible Employees**

1. Employees who request either type of military FMLA must meet the same eligibility requirements as employees who request leave under the traditional FMLA. The employee:
  - a. Must have been an employee of the State of SC (or other eligible agency as listed in section II.A.1.a-b. in this document) for at least 12 months; and

- b. Worked at least 1,250 hours in the 12 months immediately prior to taking the leave.

Additional eligibility requirements may apply to the new types of military leave. Please contact HRM with any questions regarding this addendum to the FMLA.

For additional information on leave policies, please refer to Human Resources Management Policies No. 18, [Annual Leave](#); No. 19, [Sick Leave](#); No. 20, [Extended Disability Leave](#) (formerly Leave of Absence without Pay); and No. 22, [Military Leave](#). The Department of Human Resources Management will continue to assist supervisors/managers in determining the FMLA eligibility of employees; however, HRM will no longer maintain FMLA records.

Approved By	Information Contact	Reviewed
<b>Lisa P. Montgomery, MHA Executive Vice President Finance and Operations</b>	<b>Department of Human Resources Management</b>	<b>March 2016 (Reviewed by Legal Counsel)</b>

## APPENDIX I

### I. DEFINITIONS

#### A. “Immediate Family Member,” as prescribed by the DOL:

1. Spouse is a husband or wife as defined or recognized under state and federal laws and for purposes of marriage, including a common law marriage in states where it is recognized. South Carolina recognizes common law marriages. Legally married, same-sex couples are recognized, despite the state in which the marriage took place.
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. In Loco Parentis: Persons who are “in loco parentis” include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. **A biological or legal relationship is not necessary.**

### II. HEALTH CARE PROVIDERS

- A. Doctor of medicine or osteopathy;
- B. 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);
- C. A nurse practitioner, nurse-midwife; or clinical social worker (authorized under state law and who are performing within the scope of their license); or
- D. A Christian Science practitioner. A manager or supervisor can require a second opinion.

### III. COVERED HEALTH CONDITION

1. Serious or chronic health condition is an illness, injury, impairment, or physical or mental condition that involves:
2. 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
3. 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
4. Any period of incapacity due to pregnancy, or for prenatal/postnatal care; or

5. 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.**
- B. 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.
- C. Needed to care for: Because of a serious health condition an employee is "needed to care for" an immediate 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. This includes (a) providing psychological comfort and reassurance to a covered family member receiving inpatient or home care and/or (b) filling in for others who routinely care for the covered family member or making arrangements for changes in care.

#### **IV. TYPES OF LEAVE**

- 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.
- C. "Exigency" (referred to in Section VII) is defined as:
  1. The state or quality of requiring much effort or immediate action.
  2. A pressing or urgent situation (synonym: crisis)
  3. Urgent requirements; pressing needs.

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 supervisors/managers 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.