

## **INSTITUTIONAL DIRECTIVE 6-11**

**March 27, 2006**

**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 COLLEGE.**

**Title: Family and Medical Leave Act (FMLA)**

### **I. Purpose**

The Family and Medical Leave Act of 1993 requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. While family medical leave is defined as unpaid leave, an employee who is eligible may utilize accumulated sick and/or annual leave under the agency's existing sick and annual leave policies. Whether family medical leave is paid or unpaid, it is limited to 12 weeks in any calendar year. The employee will be required to provide advance leave notice and medical certification.

### **II. Eligibility**

Employees are eligible for FMLA leave if they:

- A. Have worked for the College for at least 12 months; and
- B. Have worked at least 1250 hours in the 12-month period immediately preceding the start of the leave.

### **III. Reasons for leave**

- A. The Act entitles employees to utilize family medical leave for the following reasons:
  - 1. For the birth of a child and to care for that child;
  - 2. For placement of a child for adoption or foster care with the employee;
  - 3. To care for the employee's spouse, child, or parent who has a serious health condition; or
  - 4. For a serious health condition that makes the employee unable to perform the functions of their job.
- B. Family members are defined as:
  - 1. "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child being raised by the employee. The child must be either under 18 years of age or older than 18 and incapable of self-care because of a mental or physical disability.

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2. "Spouse" means husband or wife as defined or recognized under state law for purposes of marriage, including common law marriage if it is recognized.
  3. "Parent" means a biological parent or a non-biological parent who had primary responsibility for raising the employee. The term does not include parents "in-law".
- C. Serious Health Condition-an illness, injury, impairment, or physical or mental condition that involves:
- 1) Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice, or residential medical care facility; or
  - 2) Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or
  - 3) 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 calendar days or for prenatal care.

#### **IV. Conditions and Restrictions**

Conditions or restrictions applicable to the Act are as follows:

- A. Family medical leave will be granted up to a maximum of 12 weeks in any calendar year.
- B. The entitlement to commence family medical leave for the birth or placement of a child for adoption or foster care shall expire at the end of the twelve months period beginning on the date of such birth or placement.
- C. Family medical leave may not be taken intermittently for the birth or placement of a child unless the employee and the employee's immediate supervisor agree otherwise. However, in the case of family or personal illness, leave may be taken intermittently.
- D. When both husband and wife are employed by the State of South Carolina and are entitled to family medical leave under the provisions of the Act, the aggregate workweeks of leave to which both may be entitled will be limited to twelve work weeks during a calendar year for either the birth or placement of a child. If the leave is requested because of the illness of a child or of the other spouse, each spouse is entitled to twelve weeks of leave.

#### **V. Leave Request**

Requests for family medical leave are to be submitted in writing to the employee's immediate supervisor, with supporting certifications as to health conditions from medical providers (use PTC leave application slip). The supervisor should immediately contact the Benefits Coordinator in the Human Resources Department regarding completion of an FMLA Leave Request Form; all documentation related to the request should be submitted at that time.

If a request for family medical leave is denied for any reason, notice of the denial will be provided to the requesting employee by the supervisor. 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.

#### **VI. Use of Paid and Unpaid Leave**

While FMLA leave is generally unpaid leave, certain types of paid leave can or will be utilized during the leave period:

- A. Sick Leave--employees must use their sick leave for family medical leaves when the employee is out for a serious health condition that renders them unable to perform their job. The use of sick leave for family medical leaves will not extend the 12-week maximum for family medical leave.
- B. Sick Family Member Medical Leave--in any calendar year, employees who earn sick leave may use up to 10 days of their available sick leave for family medical leave and to care for ill members of their immediate family.
- C. 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. The use of annual leave for family medical leave will not extend the 12-week maximum for family medical leave.

Paid leave runs concurrently with family medical leave time. Employees will be placed on leave without pay after exhausting all other leave as outlined above.

#### **VII. Certification**

Employees will be required to provide medical certification for the requested FMLA leave. Human Resources will provide employees with the required forms. This 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. The certification must also include an estimate of the amount of time that the eligible employee is needed if the family medical leave is requested to care for a dependent. It will be the employee's responsibility to have the form completed and returned to human resources within 15 days of receipt of the form. An employee's failure to present a required certification may result in denial of their request for family medical leave.

The employer may require that a second medical opinion be obtained at the expense of the employer. The employer may also require an employee to present satisfactory proof of an adoption or placement for foster care. The employer may also require recertification from the employee. In cases where the employee is on family medical leave for himself/herself, they will be required to present a physician's release to return to work.

#### **VIII. Continuation of Benefits**

- A. Insurance Premiums - During the 12-week family medical leave, the College will continue to pay the employer's portion of health and dental insurance premiums. The employee must continue to pay the normal employee contribution for the duration of the leave. If the employee is out longer than the 12-week period, the employee will be

responsible for paying both the college portion in addition to their premiums if he/she wishes to keep the insurance in force.

- B. Unpaid Leave - The time spent by employees on unpaid family medical leave will not count as time worked for the purpose of accruing annual and /or sick leave.

**IX. Reinstatement from FMLA Leave**

On return from FMLA leave, an employee 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 substantially similar duties and responsibilities, which must entail equivalent skill, effort, responsibility, and authority.

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