



SOUTH CAROLINA DEPARTMENT OF AGRICULTURE

FAMILY MEDICAL LEAVE ACT (FMLA) POLICY

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.

I. SCOPE AND PURPOSE

The purpose of this policy is to ensure South Carolina Department of Agriculture (SCDA) complies with the Family and Medical Leave Act (FMLA) implementing regulations as revised effective January 16, 2009.

II. ELIGIBILITY

Any employee of the South Carolina Department of Agriculture who has worked for the State at least 12 months, not consecutive, and 1,250 hours during the 12 month period immediately prior to requesting leave under the Family and Medical Leave Act (FMLA) may be eligible for leave in accordance with this policy and the Family and Medical Leave Act. For purposes of this policy, the 12 months need not be consecutive, but employment periods prior to a break in service of 7 or more years need not be counted unless the break in service was due to fulfillment of National Guard or Reserve military obligation, or a written agreement exists concerning the State's intention to rehire the employee after the break in service. An employee returning from National Guard or Reserve duty is credited with the hours of service that would have been worked except for the military service.

III. USE OF FMLA

An eligible employee shall be granted up to a total of 12 workweeks, 60 workdays, 450 hours for employees who work 7.5 hours or 480 hours for employees who work 8 hours per day, of FMLA leave in each calendar year on a continuous or intermittent basis, for any of the following reasons:

- 1) Birth of a child and to care for the newborn child
- 2) Placement of a child for adoption or foster care with employee
- 3) Serious health condition of a spouse, child or parent
- 4) Serious health condition of the employee
- 5) Qualified exigencies that are the result of a covered service member being called to duty in the Armed Forces; and qualifying exigencies can 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 agency and the employee.

- 6) To care for a spouse, child, parent or next of kin who is a 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 of 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 incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her 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.

For the purposes of this policy, a **serious health condition** is:

- 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, which includes:
 - a. 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;
 - b. Any period of incapacity related to pregnancy or for prenatal care;
 - c. 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 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 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.

Generally, the 12-month period, under 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. In these exceptions, a new 12-month period will begin at the time of birth or placement.

IV. DEFINITIONS

Spouse means husband or wife as defined or recognized in the state where the employee resides, including common-law marriage.

Parent means a biological parent or an individual who stands or stood in when the employee was a son or daughter as defined below. This term does not include “parent in-law.”

Child, son or daughter, means a biological, adopted, foster, stepchild, a legal ward or child incapable of self-care either under or over the age of 18 and mentally or physically disabled.

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.

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

Qualifying exigency means one of the following: 1) short-notice deployment, 2) military events or activities, 3) child care and school activities, 4) financial activities and legal activities, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provide that the employer and employee agree.

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

V. SCHEDULING FMLA LEAVE

An employee requesting FMLA leave must, when foreseeable, give 30 days advance notice to the Agency 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 Agency's normal call-in procedures.

VI. CERTIFICATION OF FMLA LEAVE

SCDA Human Resources may require employees requesting FMLA leave to provide a health care certification form to support the need for leave due to a serious health condition affecting the employee or the employee's spouse, son, daughter or parent. SCDA may require certification of qualifying exigency for military family leave or for serious injury and/or illness of the covered service member. SCDA may request the employee to provide reasonable documentation or statement of family relationship. The documents may include but not limited to: child's birth certificate, or a court document or statement from the employee. All official documents obtained for these purposes will be returned to the employee. The failure to comply with the health care certification form may result in a delay or denial of FMLA leave. SCDA may also require periodic recertification of a serious health condition.

VII. DECLARATION AND CHARGING OF FMLA LEAVE

It is SCDA Human Resource's responsibility to declare leave as FMLA leave based on the information provided by the employee and health care certification form. It is important the manager or supervisor notify Human Resources immediately if an employee's absence is due to one of the FMLA qualifying reasons. If there is any doubt as to whether or not the absence qualifies as FMLA leave, Human Resources should be contacted to make the declaration. When leave is declared, Human Resources must notify the employee of such declaration. A declaration letter will be sent to the employee's home address.

- Generally, no leave will be designated as FMLA leave after the employee has returned to work.
- An eligible employee's FMLA leave allowance will be charged for the actual time an employee must be away from the job.
- The FMLA leave will run concurrently with any other leave and should be charged against both leave categories' allowances.
- Eligible employees will be required to use their accrued sick leave for FMLA leave in accordance with the Annual/Sick Leave Policy. If an eligible employee has accrued sick leave and the General Assembly has authorized voluntary furlough for that fiscal year, the employee may choose to voluntarily furlough in lieu of using leave. Refer to SCDA's Furlough/Leave Without Pay Policy and Procedures.
- If an employee's sick leave has been exhausted, they have the option of using annual leave or leave without pay.

Spouses employed by the same employer (SC State Government) 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 or 26 weeks of FMLA leave for the care for an ill or injured service member.

If an employee was absent for an FMLA reason and the Agency did not learn the reason for the absence until afterwards or upon the employee's return, the Agency may designate the leave retroactively with appropriate notice to the employee. It is imperative for the supervisor and/or liaison to contact the Human Resources when there is any question regarding FMLA qualifying reasons for absences.

VIII. INTERMITTENT FMLA LEAVE/REDUCED LEAVE SCHEDULE

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.

When FMLA leave is medically necessary to care for a seriously ill family member or because the employee is seriously ill and limited to function in some specific job duties, FMLA leave may be taken intermittently in appropriate circumstances. In certain instances, alternative job options may be explored to further assist the employee.

When FMLA leave is used for the birth or placement for adoption or foster care, use of intermittent leave is subject to the SCDA's approval.

IX. MAINTENANCE OF INSURANCE BENEFITS

SCDA 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 the employee portion of the insurance premiums. Should the employee take leave without pay during the FMLA leave, the employee must make arrangements with Human Resources to pay for his/her share of the insurance premiums while on unpaid FMLA leave.

SCDA is obligated to maintain group insurance benefits under FMLA leave. However, when the employee notifies SCDA of his/her intent not to return to work, the employee is responsible for the full insurance premium.

X. REINSTATEMENT FROM FMLA LEAVE

The employee should provide a physician's release upon their return to work.

On return from FMLA leave, generally the 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.

XI. FMLA LEAVE RECORDS

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

XII. TRANSFER OF FMLA LEAVE RECORDS

For eligible employees who transfer from one state agency to another, the FMLA leave records for that calendar year will be transferred to the receiving agency.

