

**CLEMSON UNIVERSITY  
PERSONNEL POLICIES AND PROCEDURES MANUAL**

SECTION: Payroll and Benefits		
SUBSECTION: Leave		
SUBJECT: Family and Medical Leave Act (FMLA)	Last Update:	10/14/98
	Effective:	
	Revised:	4/1/97
	Reviewed:	10/19/04

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

**Definitions.**

Spouse: 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.

Parent: A biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does not include parents "in law."

Son or Daughter: A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability.

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.

Eligibility. FMLA leave shall be granted to any State employee who has worked for the State at least twelve (12) months, and who has worked at least 1,250 hours (defined as FLSA compensable hours of work) during the 12-month period prior to the request for FMLA leave, including "on-call" hours, and is employed at a work site where 50 or more employees are employed by the employer within 75 miles of that work site.

1. In order to determine if exempt employees meet the 1,250 hours of service, work records may be kept. Otherwise, exempt employees are presumed to have met the 1,250 hours of service.
2. State government is considered a single employer for the purpose of determining FMLA leave.

Use of FMLA Leave. An eligible employee shall be granted up to a total of twelve (12) weeks of FMLA leave, in each calendar year, for any of the following reasons:

1. For the birth of a son or daughter and to care for that child;
2. For placement of a son or daughter for adoption or foster care with the employee;
3. To care for the employee's spouse, son, daughter or parent with a serious health condition; and
4. Because of a serious health condition that makes the employee unable to perform the 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.

Charging FMLA Leave. It is the agency's responsibility to declare leave as FMLA leave based on information provided by the employee.

1. When the agency designates leave as FMLA leave it must notify the employee. No leave may be designated as FMLA leave after the leave has ended.
2. An eligible employee's FMLA leave allowance shall be charged for the actual time (or at a maximum in quarter hour increments) an employee must be away from the job.
3. Any leave taken that qualifies as FMLA leave should be declared as such by the agency. The FMLA leave should run concurrently with the other leave and the leave should be charged against both leave categories' allowances.

Scheduling FMLA Leave. An eligible employee requesting FMLA leave must give 30 days advance notice to the employer of the need to take unpaid FMLA leave when the need for leave is foreseeable. When the need for leave is not foreseeable, such notice must be given as soon as practicable. The use of FMLA leave shall be subject to verification. The agency may require that an employee's request for FMLA leave to care for the employee's seriously ill spouse, son, daughter or parent, or due to the employee's own serious health condition, be supported by a certification issued by the health care provider.

Use of Paid and Unpaid Leave. Generally, FMLA leave is unpaid; however,

1. Eligible employees will be required to substitute their accrued sick leave for unpaid FMLA leave when the FMLA leave request qualifies for sick leave usage, or
2. An eligible employee may elect to substitute accrued annual leave for unpaid FMLA leave.

FMLA Leave Record. A leave record shall be maintained by the employing agency for each employee covered under the provisions of the FMLA. Such record shall:

1. Reflect the maximum FMLA leave allowance (12 weeks in a calendar year) and charges in terms of hours.
2. Indicate the number of FMLA leave hours used in the current calendar year.
3. Indicate the number of hours in the employee's official workweek.
4. Include any other information the agency may require.

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.

Transfer of FMLA Leave. For eligible employees who transfer from one 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.

FMLA Leave Forms. Contact the Clemson University Office of Human Resources for FMLA leave forms or use the following URL:

<http://www.clemson.edu/humanres/Forms/FMLAform.pdf>