

## Family and Medical Leave Act

### LP 5.5

**Policy Effective Date:**

6/11/19

**Last Revision Date:**

6/11/19

**Approved by Trustees:**

6/11/19

**Policy Owner:**

Board of Trustees

**Policy Administrator:**

Human Resources

**Affected Parties:**

Faculty  
Staff

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## I Summary

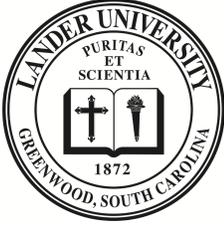
The purpose of this policy is to provide eligible employees with a general description of their rights regarding the [Family and Medical Leave Act<sup>1</sup>](#) (FMLA) and sets the guidelines for all eligible employees pursuant to the Family and Medical Leave Act of 1993, including military family leave entitlements.

## II Definitions

- A. Family Member – Employee's spouse, son, daughter, or parent, but not a parent "in-law."
- B. Spouse – Husband or wife, including same-sex marriage and common law marriage in states where common law marriage is recognized.
- C. Child, Son, or Daughter – A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in place of a parent who is either under age 18 or is age 18 years or older and incapable of self-care because of a mental or physical disability.
- D. Next of Kin – Nearest blood relative of the service member, other than the service member's spouse, parent, son, or daughter.
- E. Parent – A biological, adoptive, step or foster parent, or any other individual who stood in place of a parent to the employee when the employee was a child. This does not include "parent in-law."

## III General Information

- A. FMLA applies only to employees employed 12 months, or longer, and who have worked 1,250 hours, or more, in the preceding 12 months prior to the commencement of leave. The 12 months need not be consecutive.
- B. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break.



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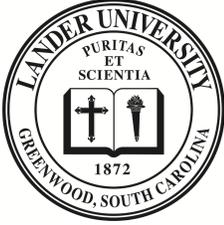
- C. To determine if those employees who are exempt from the Fair Labor Standards Act (FLSA) meet the 1,250 hours, work records may be kept. Otherwise, exempt employees are presumed to have met the 1,250 hours of service.
- D. For the purposes of FMLA, the university operates on a calendar year, meaning the 52-week period for all active employees begins on January 1.
- E. State government is a single employer for determining FMLA leave eligibility.

## IV FMLA Leave Provisions

- A. The University will grant up to 12 weeks of leave (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees.
- B. FMLA leave may be granted on a continuous or intermittent bases for any of the following reasons:
  - 1. Birth of a child and to care for the newborn child (Note: Eligibility expires 12 months after the date of birth.);
  - 2. Placement of a child for adoption or foster care with employee (Note: Eligibility expires 12 months after the date of adoption or placement.);
  - 3. Serious health condition of a spouse, child, or parent;
  - 4. Serious health condition of the employee (including disability resulting from an on-the-job injury); and
  - 5. Qualified exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or called to active duty status as a member for the National Guard or Reserves in support of a contingency operation. Qualifying exigencies can include:
    - a. Short notice deployment;
    - b. Military events and related activities;
    - c. Childcare and school activities;
    - d. financial and legal arrangements;
    - e. Counseling;
    - f. Rest and recuperation;
    - g. Post- deployment activities; and
    - h. Additional activities not encompassed in other categories but agreed by the agency and the employee.

For the purposes of this policy, a serious health condition is, under basic FMLA guidelines, defined as an illness, injury, impairment, or physical or mental condition that involves:

- A. Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice, or residential medical care facility.
- B. 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.



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- C. 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.

## V Military Family Leave Entitlement

The university will grant an eligible employee up to a total of 26 work weeks of unpaid leave during a calendar year for any of the following reasons:

- A. Military Caregivers' 26-Week Leave Entitlement – An eligible employee who is the spouse, child, parent, or next of kin of a covered service member may take up to 26 weeks of leave during a single 12-month period to care for a covered service member.
- B. Veterans' Caregivers' 26-Week Leave Entitlement – An eligible employee who is the spouse, child, parent, or next of kind of a veteran may take up to 26 weeks of leave during a single 12-month period to care for a veteran of the Armed Forces (including the National Guard or Reserves) discharged within the five-year period before the family member first takes military caregiver leave to care for a covered service member.

## VI Coordination with Paid Leave

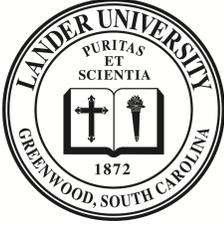
- A. Employees may choose to use accrued paid leave to cover some, or all, of the FMLA leave.
- B. The university will be responsible for designating if an employee's use of paid leave counts as FMLA, based on information provided by the employee.
- C. In no case can the use of paid leave be credited as FMLA leave after the leave has ended and employee has returned to work.
- D. Paid leave time taken for any of the conditions will count toward the weeks of FMLA Leave. The policy does not allow paid leave to be taken more than the limits provided in other applicable leave policies, including but not limited to the annual leave policy and sick leave policy.
- E. The FMLA Leave will run concurrently with any other types of leave and should be charged to the appropriate leave balances.

## VII Spouses Employed by South Carolina State Government

Spouses employed by South Carolina State Government are jointly entitled to a combined total of 12 workweeks of family leave for the birth or placement of a child for adoption or foster care, and to care for a parent (but not a parent-in-law) who has a serious health condition.

## VIII Intermittent or Reduced Schedule Leave

- A. Under certain circumstances, employees may take FMLA leave intermittently by taking leave in blocks of time, or by reducing the normal weekly or daily work schedule.
- B. FMLA leave taken because of a serious health condition of an employee or an eligible family member may be taken on an intermittent or reduced-schedule leave basis when medically necessary.
- C. Use of intermittent leave is subject to the university's approval if FMLA leave is for the birth or placement for adoption or foster care.



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- D. The supervisor may request that the employee arrange a particular schedule or to reschedule appointments or treatment, subject to consent of the health care provider and based on department needs, in instances where FMLA leave is for planned medical treatment of the employee or a family member or requires intermittent or reduced-schedule leave.

## IX Maintenance of Health Benefits During FMLA Leave

- A. The university will maintain employee's coverage for health insurance, provided the employee continues to pay the health insurance premiums that normally would be deducted from the employee's paycheck.
- B. In some instances, the university may recover premiums it paid to maintain health insurance for an employee who fails to return to work from FMLA leave.

## X Employment Status

- A. The employee should provide a physician's release upon their return to work.
- B. An eligible employee who takes FMLA leave is entitled to return from leave and be restored to the position held prior to beginning FMLA leave or to a comparable position with equivalent benefits, pay, and other terms and conditions of employment.
- C. The comparable position must involve the same or substantially similar duties and responsibilities and must entail equivalent skills, effort, responsibility, and authority.
- D. An employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave.

## XI Notice and Certification of FMLA Leave

Employees seeking to use FMLA leave may be required to provide:

- A. 30-day advance notice of the need to take FMLA leave when the need is foreseeable, or notice given as soon as practicable.
- B. Medical certifications supporting the need for leave due to a serious health condition affecting the employee or immediate family member.
- C. Certification of qualifying exigency for military family leave or for serious injury and/or illness of the covered service member.
- D. Copies of the adoption papers or letter from the attorney or agency handling the adoption or foster care placement.
- E. Second or third medical opinions and periodic recertifications (at the expense of the university).
- F. Periodic recertification and reports during FMLA leave regarding the employee's status and intent to return to work.

## XII Responsibility for Administration

- A. The Office of Human Resources is responsible for FMLA leave approval, computation, leave computation, leave adjustment, and leave policy interpretation. All provisions under FMLA will be interpreted to be consistent.



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- B. FMLA leave policies will be applied in an equitable manner for all eligible employees. In instances of suspected FMLA leave abuse or violation of policy, disciplinary action may be taken in accordance with university policy.
- C. The university will maintain leave records for each employee covered under FMLA. Leave records may be subject to audit.

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<sup>1</sup> FMLA Website: <https://www.dol.gov/whd/fmla/>