SOUTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

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HR10.00 Family and Medical Leave Policy and Procedures

EFFECTIVE: April 16, 2010

APPLIES TO: All South Carolina Department of Health and Human Services (the Department) Workforce Members

POLICY
In accordance with the Family Medical Leave Act of 1993 (FMLA), it is the policy of the Department of Health and Human Services (the Department) to provide eligible employees unpaid, job-protected leave and continuation of health coverage for certain specified reasons. The Department will not interfere with, restrain, or deny the exercise of any right provided by the FMLA for eligible employees. Furthermore, the Department will not discharge or in any other way discriminate against any individual for opposing any unlawful FMLA practice, or for involvement in any proceeding related to the FMLA. It is an employee’s responsibility to provide notice of the desire to take FMLA leave to their supervisor and/or the Department’s Office of Human Resources.

PURPOSE
The purpose of this policy is to comply with the FMLA, as amended, and to provide employees with a general description of their rights under FMLA. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law. For more detailed information, consult the FMLA and relevant federal and state regulations. (29 U.S.C. 2654; 29 CFR Part 825; S.C. Code Ann. Regs. 19-101 et
seq.) The Department reserves the right to modify this or any other policy as necessary, in its sole discretion to the extent permitted by law. This policy cancels and supersedes the Department’s Family and Medical Leave Policy (9.00) issued June 2007.

10.01 Employee Eligibility
A. To be eligible for FMLA leave, an employee must have worked at least twelve (12) months for the state government in the preceding seven (7) years (limited exceptions apply to the seven-year requirement).
B. The employee must have worked at least 1,250 hours for the state government over the preceding twelve (12) months. Leave time taken is not counted toward the 1,250 hours.
C. For the purposes of determining FMLA leave, South Carolina state government is considered a single employer.
D. Although an employee may be eligible for FMLA, if the employee does not provide complete and sufficient certification documentation, the Department may deny the taking of FMLA leave. As Section 825.305 (d) of the Federal FMLA Regulations states, “If the employee fails to provide the employer with a complete and sufficient certification ... or fails to provide any certification, the employer may deny the taking of FMLA leave.”

10.02 FMLA Qualifying Events
A. FMLA leave may be taken for the following reasons:
   1. The birth of a child, or to care for a newly-born child (up to 12 weeks);
   2. The placement of a child with the employee for adoption or foster care (up to 12 weeks);
   3. To care for an immediate family member (employee’s spouse, child, or parent) with a serious health condition (up to 12 weeks);
   4. An employee’s serious health condition that makes the employee unable to perform the essential functions of the employee’s job (up to 12 weeks);
5. To care for a covered servicemember with a serious injury or illness related to certain types of military service (up to 26 weeks); or
6. To handle certain qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on duty under a call or order to covered active duty in the Uniformed Services (up to 12 weeks).

B. The maximum amount of leave that may be taken in a twelve (12) month period for all reasons combined is twelve (12) weeks, with one exception: leave to care for a covered servicemember, for which the maximum combined leave entitlement is twenty-six (26) weeks.

10.03 Using Leave
A. The Department will measure the twelve (12) month period on a calendar year basis. Each time an employee takes leave, the Department will compute the amount of leave the employee has already taken under this policy during the calendar year and subtract it from the twelve (12) workweeks of available leave. The balance remaining is the amount the employee is entitled to take at that time.

B. For leave to care for a covered servicemember, the Department will measure the twelve (12) month period as a rolling twelve (12) month period measured forward.

C. FMLA leave already taken for other FMLA qualifying events will be deducted from the total twenty-six (26) workweeks available for leave to care for a covered servicemember.

D. Eligible employees may take FMLA leave in a single block of time, intermittently (in separate blocks of time), or by reducing the normal work schedule when medically necessary for the serious health condition of the employee or immediate family member, or in the case of a covered servicemember, his or her injury or illness. Eligible employees may also take intermittent or reduced-schedule leave for military qualifying exigencies.

E. Leave because of the birth of a child, or placement for adoption or foster care of a
child may be taken intermittently and must be completed within the twelve (12) month period beginning on the date of birth or placement of the son or daughter and is subject to the Department’s approval. All related time taken for the FMLA absence will count against an employee’s FMLA leave entitlement for the calendar year.

F. Employees who require intermittent or reduced-schedule leave must schedule their leave so that it will not unduly disrupt the Department's regular business operations. The employee and the Department must mutually agree to the schedule before the employee may take the intermittent or reduced work schedule leave. Any changes to an employee’s work schedule must be approved through the Department’s Office of Human Resources or the employee’s pay may be affected.

G. Depending on the purpose of an employee’s leave request, the Department requires the employee to use accrued sick leave concurrently with some or all of the employee’s FMLA leave. In order to substitute paid leave for FMLA leave, an eligible employee must comply with normal procedures for the applicable paid-leave policy (e.g., call-in procedures, advance notice, etc.). Employees must communicate the intended use of their accrued sick leave or annual leave or leave without pay to their supervisors utilizing the Supplemental Leave Request Form (HR – Form 145 – SLR), which is available on the Department’s intranet. This form should be completed before the employee goes on FMLA leave.

10.04 Maintenance of Pay and Health Benefits

A. If the employee and/or the employee’s family participate in the Department’s group health plan, the Department will maintain the employer’s share of coverage during the employee’s FMLA leave on the same terms as if the employee had continued to work. If applicable, the employee must make arrangements to pay the employee’s share of health plan premiums while on leave. In some instances, the Department may recover premiums it paid to maintain health coverage or
other benefits for the employee and the employee’s family.

B. Use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of the employee’s leave.

C. Employees who are on leave without pay the day before a holiday shall not be paid or receive holiday compensatory time for holidays falling during this period of leave without pay.

D. Following the exhaustion of the employee’s FMLA leave, the Department’s obligation to maintain the employee’s group health plan benefits ends (subject to any applicable COBRA rights).

10.05 Employee Notice

A. When seeking FMLA leave, an employee is required to provide sufficient information to determine if the requested leave may qualify for FMLA. Sufficient information may include, but is not limited to, documentation supporting that the employee is unable to perform essential job functions, a family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, circumstances supporting the need for military family leave, or a Medical Certification Form (see Section 10.06 – “Medical Certification” for explanation of forms). The employee must also inform the Department in writing if the requested leave is for a reason for which FMLA leave was previously taken or certified.

B. An employee is also required to provide the anticipated timing and probable duration of the leave. If the reason for FMLA leave is foreseeable (for example, planned surgeries or normal births), the employee must give thirty (30) days advance notice in writing. In the case of exigency leave, the employee must notify the Department as soon as practicable.

C. If an employee becomes aware of a need for FMLA leave less than thirty (30) days in advance (for example, a serious injury in a car accident or a premature birth), the employee must notify the Department as soon as practicable and in
compliance with the Department’s attendance and leave procedures.

D. Notice to the Department may be accomplished by completing the HR – Form 145 – SLR Form or by contacting Human Resources.

E. Any employee requesting FMLA leave is required to provide reasonable documentation or a statement of family relationship. Reasonable documentation includes but is not limited to a child’s birth certificate or a court document. A statement of family relationship is a simple statement from the employee that states that the employee wants leave to care for a spouse, a son or daughter, or a parent, as defined under the FMLA. Any official document submitted for this purpose will be examined and returned to the employee.

F. Failure to follow the guidelines of the Employee Notice section of this policy may result in the delay or denial of FMLA leave time or proper FMLA employment coverage.

10.06 Medical Certification

A. The Department may request certification of a serious health condition or a serious injury or illness of a covered servicemember. This certification can be obtained via the use of one of three (3) medical certification forms:

- Certification of Health Care Provider for Employee’s Serious Health Condition – HRFMLA – Form 101E – Med Cert Employee
- Certification of Health Care Provider for Family Member’s Serious Health Condition – HRFMLA – Form 101F – Med Cert Family
- Certification of Serious Injury or Illness of Covered Servicemember – for Military Family Leave – HRFMLA – Form 101M – Med Cert Military

The employee is required to respond to such a request within fifteen (15) calendar days of the request or provide a reasonable explanation for the delay. Failure to provide certification in a timely manner may result in the delay or denial of FMLA leave time or proper FMLA employment coverage. The Medical
Certification Form may be used to provide the required certification.

B. Certification of a serious health condition must include: the health care provider’s fax number and area of specialty, nature of the condition, the date when the condition began, its expected duration and a brief statement of treatment, a medical opinion on ability to perform essential job functions (if not, specify which functions can be performed), whether intermittent leave is anticipated, why and how often. Diagnosis may be included.

1. **Employee’s Absence** – For absences due to the employee's own medical condition, the certification also must include a statement from the health care provider that the employee is unable to perform work of any kind or that the employee is unable to perform the essential functions of the position.

2. **Family Member’s Absence and/or absence for Covered Servicemember** – For a serious health condition of a family member or covered service member, the certification must also include a statement from the health care provider that the patient requires assistance and that the employee's presence would be beneficial or desirable.

3. **Intermittent Absence** – If the request qualifies for intermittent absences or a reduced work schedule, the certification also must include the dates and probable duration of treatment and a statement from the health care provider of medical necessity for working intermittently or working a reduced schedule.

C. The Department may use a health care provider or human resources professional, to verify or clarify a medical certification of a serious health condition.

D. The Department has the right to request a second medical opinion if it has reason to doubt the validity of the certification provided. The second opinion will be paid for by the Department and will be obtained from a physician or other qualified health care provider as selected by the Department but not employed on a regular basis by the Department. If the two opinions differ, a third opinion may
be obtained at the expense of the Department; however, the health care provider in this instance must be agreed on by both parties. The third opinion shall be final.

1. The Department may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion.

2. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

3. The Department will not require second opinions of illness or injury for Military Caregiver Leave.

E. Certifications must be completed in their entirety. This information must not be vague, ambiguous, non-responsive, or illegible.

1. If the certification is incomplete or insufficient, the employee will be given a statement in writing describing what is incomplete or insufficient and the amount of time the employee has to cure the issue.

2. Failure to cure the issue within seven (7) calendar days may result in the denial of FMLA leave.

F. In all cases, the Department may request recertification of a medical condition, every six (6) months in connection with an employee’s leave for a serious health condition. Additionally, the Department may request an annual medical certification for conditions lasting beyond a single leave year.

G. Regarding requests for Qualifying Exigency Leave, the Department may request a copy of the servicemember’s orders, ask for third party verifications, or require separate certification regarding the nature of the family member’s military service. Certification for qualifying exigency leave can be obtained via use of the Qualifying Exigency for Military Family Leave Form (HRFMLA – Form 104 – QE).

H. Leave requests for any employee who refuses to provide a certification may be denied or the Department may withdraw any designation of FMLA and the
employee’s leave of absence would be treated in accordance with our standard leave of absence and attendance policies, subjecting the employee to discipline up to and including termination. Note: As Section 825.305 (d) of the Federal FMLA Regulations states, “If the employee fails to provide the employer with a complete and sufficient certification ... or fails to provide any certification, the employer may deny the taking of FMLA leave.”

10.07 **Designation/Declaration**

A. FMLA coverage may be requested by an employee and submitted to his or her supervisor for consideration. The supervisor must send all FMLA requests to the Department’s Office of Human Resources immediately upon receipt so that it can be determined if the employee’s request is FMLA eligible.

B. Routine absences are not covered by FMLA, even if the period of absence is more than three (3) consecutive full calendar days. It is the supervisor’s responsibility to notify and consult with the Department’s Office of Human Resources when an employee has been on a period of extended leave due to personal illness, illness of a family member, or military service.

C. Within five (5) business days after the employee has provided notice, the Department’s Office of Human Resources will provide the employee with a Notice of Eligibility and Rights and Responsibilities Form (HRFMLA – Form 102 – NERR), along with a medical certification form for the physician to complete. The Form 102 – NERR will inform the employee if they are or are not eligible for FMLA coverage and provide information regarding what the employee must do next.

D. The employee shall have fifteen (15) calendar days to return the certification information or other required information to the Office of Human Resources. After review of the certification information, the Department’s Office of Human Resources will make a determination regarding FMLA approval or non-approval and shall notify the employee via the Designation Notice Form (HRFMLA –
Form 103 - DN), within five (5) days.

E. Providing false or misleading information or omitting material information in connection with an FMLA leave will result in disciplinary action, up to and including immediate termination.

10.08 Return to Work

A. Employees should notify the Department’s Office of Human Resources in writing of their intent to return to work two (2) weeks prior to the anticipated date of return or of any medically necessary changes in the date of return.

1. While covered by FMLA, the employee is responsible for submitting periodic reports as deemed appropriate during the leave regarding the employee’s status and intent to return to work.

2. If the leave was due to the employee’s serious health condition, the employee is required to provide medical certification of fitness for duty from the treating health care provider before returning to work. The fitness for duty clearance should address the employee’s ability to perform the essential functions of the employee’s position.

3. The Department may ask for a Return to Work Statement that clearly specifies any job-related performance restrictions.

B. Upon returning from FMLA leave, eligible employees will generally be restored to their original job or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions.

C. Any employee who fails to return to work as scheduled after FMLA leave or exceeds the 12-week FMLA entitlement (or in the case of Military Caregiver Leave, the 26-week FMLA entitlement), and fails to notify his or her supervisor of the intention to return to work, will be subject to the Department’s standard leave of absence and attendance policies. This may result in immediate termination if the employee has no other Department-provided leave or coverage available that applies to his or her continued absence.
10.09 **Employer Compliance/Employees’ Enforcement Rights**

A. FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided under FMLA, or discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

B. While the Department encourages employees to bring any concerns or complaints about compliance with FMLA to the attention of the Department’s Office of Human Resources, FMLA regulations require employers to advise employees that they may file a complaint with the U.S. Department of Labor or bring a private lawsuit against an employer.

C. Further, FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law which provides greater family or medical leave rights.

10.10 **Military Caregiver Leave**

A. Unpaid Military Caregiver Leave is designed to allow eligible employees to care for certain family members who have sustained serious injuries or illnesses in the line of duty while on covered active duty. The family member must be a covered servicemember. [See HRFMLA – Form 101M – Med Cert Military]

B. To be “eligible” for Military Caregiver Leave, the employee must be a spouse, son, daughter, parent, or next of kin of the covered servicemember. The employee must also meet all other eligibility standards as set forth within the FMLA Leave policy.

C. An eligible employee may take up to twenty-six (26) workweeks of Military Caregiver Leave to care for a covered servicemember in a “single 12-month period.” The “single 12-month period” begins on the first day leave is taken to care for a covered servicemember and ends twelve (12) months thereafter, regardless of the method used to determine leave availability for other FMLA-
qualifying reasons. If an employee does not exhaust his or her twenty-six (26) workweeks of Military Caregiver Leave during this “single 12-month period,” the remainder is forfeited.

D. Military Caregiver Leave is applied on a per-injury basis for each servicemember. Consequently, an eligible employee may take separate periods of caregiver leave for each and every covered servicemember, and/or for each and every serious injury or illness of the same covered servicemember. A total of no more than twenty-six (26) workweeks of Military Caregiver Leave, however, may be taken within any “single 12-month period.”

E. Within the “single 12-month period” described above, an eligible employee may take a combined total of twenty-six (26) weeks of FMLA leave including up to twelve (12) weeks of leave for any other FMLA-qualifying reason (i.e., birth or adoption of a child, serious health condition of the employee or family member, or a qualifying exigency). For example, during the “single 12-month period,” an eligible employee may take up to sixteen (16) weeks of FMLA leave to care for a covered servicemember when combined with up to ten (10) weeks of FMLA leave to care for a newborn child.

F. An employee seeking Military Caregiver Leave may be required to provide appropriate certification from the employee and/or covered servicemember and completed by an authorized health care provider within fifteen (15) calendar days. (See HRFMLA – Form 101M – Med Cert Military)

G. Military Caregiver Leave is subject to the other provisions in our FMLA Leave Policy (requirements regarding employee eligibility, appropriate notice of the need for leave, use of accrued paid leave, etc.).

10.11 Qualifying Exigency Leave

A. Eligible employees may take unpaid “Qualifying Exigency Leave” to tend to certain “exigencies” arising out of the duty under a call or order to covered active duty of a “covered military member” (i.e. the employee’s spouse, son, daughter,
or parent). (See HRFMLA – Form 104 – QE)

B. Up to twelve (12) weeks of Qualifying Exigency Leave is available in any 12-month period, as measured by the same method that governs measurement of other forms of FMLA leave within the FMLA policy (with the exception of Military Caregiver Leave, which is subject to a maximum of 26 weeks of leave in a “single 12-month period”). Although Qualifying Exigency Leave may be combined with leave for other FMLA-qualifying reasons, under no circumstances may the combined total exceed twelve (12) weeks in any 12-month period. The employee must meet all other eligibility standards as set forth within the FMLA policy.

C. Persons who can be ordered to covered active duty include active and retired members of the Regular Armed Forces, certain members of the retired Reserve, and various other Reserve members including the Ready Reserve, the Selected Reserve, the Individual Ready Reserve, the National Guard, state military, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, and Coast Guard Reserve.

D. A call to covered active duty refers to a federal call to active duty, and state calls to active duty are not covered unless under order of the President of the United States.

E. An employee seeking Qualifying Exigency Leave is required to submit appropriate supporting documentation in the form of a copy of the covered military member’s covered active duty orders or other military documentation indicating the appropriate military status and the dates of covered active duty status, along with a statement setting forth the nature and details of the specific exigency, the amount of leave needed and the employee’s relationship to the military member, within fifteen (15) calendar days.

10.12 Definitions

A. Break in Service – An interruption of continuous State service. An employee
experiences a break in State service when the employee (1) separates from State service and is paid for unused annual leave; (2) moves from one State agency to another and is not employed by the receiving agency within fifteen (15) calendar days following the last day worked (or approved day of leave at the transferring agency); (3) remains on leave for a period of more than one calendar year; (4) separates from State service as a result of a reduction in force and is not recalled to the original position or reinstated with State government within twelve (12) months of the effective date of the separation; (5) involuntarily separates from State service and the agency’s decision is upheld by the State Employee Grievance Committee or by the courts; or (6) moves from a full-time equivalent (FTE) position to a temporary, temporary grant, or time-limited position.

B. Chronic Serious Health Condition – (1) Requires visits for treatment by a health care provider at least twice a year; (2) continues over an extended period of time (including recurring episodes of a condition), and (3) may cause episodic incapacity rather than a continuing period of incapacity (some examples include but are not limited to; asthma, diabetes, epilepsy).

C. Continuing Treatment by a Health Care Provider – Any one of the following: (1) a period of incapacity of more than three (3) consecutive, full calendar days; (2) requires in-person treatment by a health care provider at least once within seven (7) days of the first day of incapacity, and requires either (a) a continuing treatment initiated by the health care provider during the first treatment, or (b) a second in-person visit to the health care provider for treatment (the necessity of which is determined by the health care provider) within thirty (30) days of the first day of incapacity.

D. Covered Active Duty – In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law
referred to in section 101(a)(13)(B) of title 10, United States Code.

E. Covered Military Member – An employee’s spouse, son, daughter or parent on covered active duty or call to covered active duty status.

F. Covered Servicemember – 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 or a veteran who is undergoing medical treatment, recuperation or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

G. Intermittent Leave – Leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

H. Long-term Condition – A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (for example, Alzheimer’s, a severe stroke, or the terminal stages of a disease).

I. Next of Kin – Nearest blood relative of a covered servicemember, other than the covered servicemember’s spouse, parent, son or daughter (for example, siblings, grandparents, aunts, uncles or cousins) in the order of priority designated in 29 CFR § 825.122(d).

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

K. Qualifying Exigency – A non-medical activity that is directly related to the
covered military member’s covered active duty or call to covered active duty status.

L. Serious Health Condition – An illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. The common cold, flu, earaches, upset stomach, minor ulcers, some headaches and routine dental problems are not covered as serious health conditions. For an employee to be covered by FMLA for the treatment of substance abuse, the leave must be on the referral of a health care provider.

M. Serious Injury or Illness – In the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade rank, or rating and in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years prior to the treatment for which he or she requests leave, means a qualifying injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

N. 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 eighteen (18), or eighteen (18) or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence.

O. Son or Daughter on Covered Active Duty or Call to Covered Active Duty Status – An employee’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active
duty or call to covered active duty status, and who is of any age.

P. Son or Daughter of a Covered Servicemember – A covered servicemember’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.

Q. Spouse – A husband or wife as defined or recognized under State law for purposes of marriage, including a common law marriage.

R. Veteran – A person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

S. Worksite – The site to which the employee reports to work.

Associated Forms

1. Certification of Health Care Provider for Employee’s Serious Health Condition – (HRFMLA – Form 101E – Med Cert Employee)

2. Certification of Health Care Provider for Family Member’s Serious Health Condition – (HRFMLA – Form 101F – Med Cert Family)

3. Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave – (HRFMLA – Form 101M – Med Cert Family)

4. Notice of Eligibility and Rights & Responsibilities – (HRFMLA – Form 102 – NERR)

5. Designation Notice – (HRFMLA – Form 103 – DN)

6. Certification of Qualifying Exigency for Military Family Leave – (HRFMLA – Form 104 – QE)

7. Supplemental Leave Request – (HR – Form 145 – SLR)