

## **WINTHROP UNIVERSITY FAMILY AND MEDICAL LEAVE ACT**

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The Family and Medical Leave Act (FMLA) of 1993 requires Winthrop University to provide up to 12 weeks of unpaid leave each calendar year to “eligible” employees for specified family and medical leave reasons. The FMLA also provides up to 12 weeks of leave each calendar year to eligible employees for a “qualifying exigency” arising out of a covered family member’s active duty or call to active duty in the Armed Forces in support of a contingency plan. In addition, the FMLA provides for up to 26 weeks of leave in a single 12-month period for eligible employees to care for a covered family member who has incurred an injury or illness in the line of duty while on active duty in the Armed Forces.

### **A. Employee Eligibility**

For a Winthrop University employee to be eligible for FMLA benefits, he/she must:

1. have worked for the State of SC for a total of at least 12 months; and
2. have worked at least 1,250 hours over the previous 12 months preceding the request of FMLA leave.

### **B. Basic Leave Entitlement**

Employees are eligible for a total of 12 weeks of unpaid FMLA leave during a calendar year for any of the following reasons:

1. for incapacity due to pregnancy, prenatal medical care or child birth;
2. to care for the employee’s child after birth, or placement for adoption or foster care;
3. to care for a “covered family member” (“Covered family member” is defined as the employee’s spouse, son or daughter, or parent who has a serious health condition); or
4. for a serious health condition that makes the employee unable to perform the employee’s job.

If both spouses work for the state of South Carolina, they are jointly entitled to a combined total of 12 workweeks of family leave for the birth or placement of a son

or daughter, for adoption or foster care, and to care for a parent (but not a parent-in-law) who has a serious health condition.

C. Military Family Leave Entitlements

**Qualifying Exigency Leave**

Eligible employees with a spouse, son, daughter, or parent on \*covered active duty or who has been notified of an impending call or order to active duty in the Armed Forces, including a member of the National Guard or Reserves, may use their unpaid 12-week leave entitlement to address certain qualifying exigencies. \*Qualifying exigencies may include:

- Short notice deployment (deployment on seven or less days of notice) leave may be granted for a period of seven days from the date of notification;
- Certain child care or related activities;
- The need to address certain financial and legal arrangements;
- Attending certain counseling sessions;
- Up to five days of leave to spend time with a covered military member who is on short-term temporary “rest and recuperation” leave during deployment;
- Attending certain post-deployment activities; and
- Additional activities to address other events which arise out of the covered military member’s active duty or call to active duty status, provided the supervisor and the employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

\*Covered active duty and qualifying exigencies are further defined by the [US Department of Labor Fact Sheet #28M\(c\)](#).

**Service Member Caregiver Leave**

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of unpaid leave to care for a covered service member during a single 12-month period. Eligible employees include the spouse, son, daughter, parent, or next of kin of a covered service member with a serious injury or illness. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list for a serious injury or illness. A serious injury or illness is one that is incurred by the service member in the line of duty on active duty that may cause the service member to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the service member’s active duty and that were aggravated by service in the line of duty on active duty.

D. Definition of Serious Health Condition

A “serious health condition” means an illness, injury, impairment or physical or mental condition that involves either:

1. an overnight stay in a medical care facility;
2. or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee’s job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

D. Intermittent FMLA Leave

FMLA leave may be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the operations of the university or the department. Leave due to qualifying exigencies may also be taken on an intermittent basis.

E. Substitution of Paid Leave for Unpaid Leave

Although FMLA leave is unpaid leave, Winthrop University requires employees to use accrued paid leave concurrently with unpaid FMLA leave. Employees will be placed in leave without pay status only after all other applicable paid leave balances have been exhausted. The time spent by employees on unpaid FMLA leave will not count as time worked for the purpose of accruing annual and/or sick leave. The use of paid leave (sick or annual) will be in accordance with the respective policies governing paid leave.

Winthrop University requires that all unused sick leave balances be applied toward and run concurrently with FMLA leave if the qualifying reason for FMLA leave is due to the employee’s own serious health condition.

Employees who earn annual leave may use their accrued annual leave hours when the purpose of the leave is to care for a spouse, child, or parent with a serious health condition, or to run concurrently with qualifying exigency leave for employees with qualified covered active duty family members. In addition, according to the Winthrop University Sick Leave Policy, employees may use up to 10 days per calendar year of the employee’s accrued sick leave to provide care for members of the immediate family who become ill or disabled. Once the allowed 10 days of sick

leave is used to care for a member of the immediate family, employees may use their accrued annual leave.

F. Employee Responsibilities

Employees must provide 30-days advance notice of the need to take FMLA leave when the need is foreseeable. When a 30-day notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the department's normal call-in procedures.

Employees must provide sufficient information for the Office of Human Resources to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees must also inform either their supervisor or the Office of Human Resources if the requested leave is for a reason for which FMLA leave was previously taken or certified.

Depending on the nature of the FMLA leave sought, employees may be required to provide a medical certification and periodic recertification supporting the need for the leave. Employees on FMLA leave must notify the Office of Human Resources if their condition or any restrictions identified by a medical certification changes while on approved leave. Indications of behavior inconsistent with restrictions identified by a medical certification can serve as grounds to seek medical recertification of the need for leave under FMLA.

Winthrop also reserves the right to require a second opinion at its expense if Winthrop has reason to doubt the initial medical certification. In some cases, a third opinion may be sought if a conflict exists between the medical certifications. Upon request, an employee seeking leave due to qualifying exigencies may be required to provide supporting documentation.

G. Employer Responsibilities

Winthrop University must inform employees requesting leave whether they are eligible under FMLA. If the employee is eligible, the notice must specify any additional information required as well as the employees' rights and responsibilities. If the employee is not eligible, the notice must provide a reason for the ineligibility.

Winthrop University must inform employees if the leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. Winthrop University must inform the employee if the requested leave is not FMLA-protected.

It is unlawful for Winthrop University to interfere with, restrain, or deny the exercise of any right provided under the FMLA; and to 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.

H. Benefits and Protections

Group health insurance will be maintained for the employee on FMLA leave whenever such insurance was provided before the leave was taken on the same terms as if the employee had continued to work. Employees will be required to pay for their share of the health insurance premiums while on leave in the same manner as they paid while working.

An employee returning from approved FMLA leave will be restored to his/her original position, or to a similar position with equivalent pay, benefits and other employment terms and conditions for which the employee is qualified. The employee will not lose any benefit that the employee earned or was entitled to before using FMLA leave.

An employee who is determined to be a “key employee” (among the highest paid ten percent of all employees within 75 miles of the employee’s worksite) could be denied job restoration if such denial is necessary to prevent substantial and grievous economic injury to the operations of the university.

For additional information concerning FMLA leave, contact the Winthrop University Office of Human Resources.