**Sample FMLA Master Policy**

Family and Medical Leave Act Policy

The federal Family & Medical Leave Act of 1993 (FMLA) as amended, requires employers with 50 or more employees to provide eligible employees with unpaid job-protected leave. There are two types of leave available, including the 12 week leave entitlement for the employee’s own, or covered family member’s serious health condition, for childbirth and bonding with a child, as well as the military family leave entitlements described in this policy.

In addition to FMLA, employees may also be eligible for leave under a similar state law. [Note: This policy is drafted for federal, NC and SC compliance. Some other states may have more generous FMLA/leave regulations. If you have employees working in other states, make sure to modify this policy to reflect applicable state laws outside of NC/SC.]

**I. Who the Policy Covers**

To be eligible for Family and Medical Leave Act (FMLA), an employee must:

* Have been employed by the Company for at least 12 months;\*
* Have worked at least 1,250 hours during the 12 month period immediately preceding the need for leave; and
* Work at a location where the Company employs at least 50 people within a 75 mile radius.

\*The 12 months of service do not have to be consecutive. Employment before a break in service of seven (7) years or more will not be counted, unless the break in service was caused by the employee’s USERRA-covered service obligation, or there was a written agreement that the employer intended to rehire the employee after the break in service.

**II. Amount of Time Off**

Under this policy, the Company provides eligible employees with:

1. Up to 12 workweeks of unpaid, job-protected leave in a 12-month period [Note: must describe how 12 months is calculated – the rolling back method is recommended, but other options include calendar, anniversary or fiscal year] for certain family and medical reasons; or
2. Up to 26 workweeks of unpaid, job-protected leave for eligible employees to care for a covered service member with a serious illness or injury, as specified in the Company’s Military FMLA Policy. Under the caregiver leave, the twelve month period is calculated rolling forward from the first day of leave [note: this method of calculation for this type of leave is required by the FMLA regulations]. Military FMLA is addressed in a separate section below.

**III. Reasons for Leave**

Eligible employees can take leave for any of the following reasons:

1. Because of the birth of an employee’s child.\*
2. Because of the placement of a child with the employee for adoption or foster care.\*
	1. Leave due to the above reasons must be taken during the first 12 months following the birth or placement.
3. To care for the employee’s own serious health condition including health conditions relating to pregnancy, childbirth and related medical conditions.
4. To care for the serious health condition of the employee’s child, spouse or parent;\*
	1. Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood *in* *loco parentis* to the employee. This term does not include parents ‘‘in law.’’
	2. Child means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of an employee 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’’ at the time that FMLA leave is to commence.
		1. ***In loco parentis*** *–* includes people with day-to-day responsibilities to care for or financially support a child. Some factors that determine in loco parentis status include: the age of the child; the degree to which the child is dependent on the person; the amount of support, if any, provided; and the extent to which duties commonly associated with parenthood are exercised.
		2. **Incapable of self-care**—The child requires active assistance or supervision to provide daily self-care in three or more “activities of daily living,” or “instrumental activities of daily living,” including adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing, eating or instrumental activities such as shopping, taking public transportation or maintaining a residence.
		3. **Physical or mental disability**—A physical or mental impairment that substantially limits one or more major life activity of the individual.
	3. Serious health condition—Illness, injury, impairment, or physical or mental condition that involves:
		1. **Inpatient care** in a hospital, hospice or residential medical care facility.
		2. **A period of incapacity** of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition) that also involves: 1) treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by or under the orders of a health care provider; or 2) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider. The first (or only) visit must occur in person within seven days of the first day of incapacity (e.g. outpatient surgery, strep throat).
		3. Any incapacity due to **pregnancy** or for prenatal care.
		4. **Chronic conditions** requiring periodic treatment of at least twice per year by or under the supervision of a health care provider, which continue over an extended period of time and may cause an episodic rather than a continuing period of incapacity (for example, asthma, migraines, diabetes, epilepsy, etc.).
		5. **Permanent or long-term conditions** where incapacity is permanent or long term and requires the continuing supervision of a health care provider even if active treatment is not being provided, (such as Alzheimer’s, terminal cancer, etc.).
		6. **Multiple treatments** by or under the supervision of a health care provider either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy), severe arthritis (physical therapy) or kidney disease (dialysis).
5. To allow employees to take up to 12 weeks of leave because of any qualifying exigency arising out of the fact that a son, daughter, spouse or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces.
6. To allow the employee spouse, son, daughter, parent or next of kin (nearest blood relative) of a covered service member with a serious injury or illness to take up to 26 weeks of leave within a single 12 month period, rolling forward, to care for the service member.

\*In cases where two employees of the Company are married to each other, the spouses are limited to a combined total of 12 weeks’ leave if the leave is taken to care for the respective employee’s parent, for the birth of the employee’s son or daughter or to care for the child after the birth, or for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement.

**IV. Leave Is Unpaid, but Employee Must Use Paid Time Off When Available**

[Note: **Customize this section as applicable to your organization**. Many organizations require paid leave to be used during FMLA to ensure the continuing payment of benefit premiums; whatever your policy, make it clear in this section.]

Although FMLA leave is unpaid, during any FMLA leave, wherever permitted by state law, employees must use all of any accrued paid time off, including [vacation leave, sick leave, PTO, etc.] A paid leave of absence counts as service when calculating [vacation/PTO] eligibility. An unpaid leave of absence of four (4) weeks or longer does not count as service for [vacation/PTO] eligibility. [Note: Be clear on the impact of unpaid leave on PTO accruals; this could end when paid leave ends or could end after a chosen time period.] FMLA leave does not constitute a break in service for purposes of seniority or any employee benefit plan.

The employee may be eligible for short or long-term disability payments and/or workers’ compensation benefits under those insurance plans. These payments, if applicable, will run concurrently with time off counted under FMLA. In no case will paid leave result in the receipt of more than 100% of an employee’s salary.

The substitution of paid leave time for unpaid leave time does not extend the 12 week leave period.

**V. FMLA Benefits**

During FMLA leave, the Company will maintain health benefits [Note: You are not required to continue non-health benefits during FMLA; however, employees must be able to pick up the benefit at the end of FMLA without a waiting period, which often requires you continuing benefits. If other benefits will continue during FMLA, note here.] under the same conditions as if the employee had continued working. If paid time off is substituted for unpaid FMLA leave, the Company will deduct the employee portion of the benefit premiums as regular payroll deductions. If FMLA leave is unpaid, the employee must make arrangements with Human Resources to pay the employee portion of the premiums. [Note: Spell out how this process works at your company.]

If premiums are more than 30 days late coverage may lapse, with 15 days’ notice. If an employee returns to the company and owes money for his portion of premiums, the Company will deduct the amount owed from subsequent paychecks. Failure to return from FMLA leave may result in the employee being required to reimburse the Company for the portion of the employee’s benefit premiums paid by the Company during the FMLA leave, unless the employee cannot return to work because of a serious health condition, or other circumstances beyond the employee’s control.

**VI. Notice of Leave**

If the need for FMLA leave is foreseeable, the employee must give the Company at least 30 days prior notice, in writing, if possible. Where the need for FMLA leave is not foreseeable, the employee is expected to notify the Company as soon as is practical, usually within one (1) to two (2) business days.

The employee must comply with the Attendance Policy at his or her facility. For example, if employees must call their supervisor an hour before their shift to notify the Company of an absence or tardy, they are required to do so for an FMLA based absence.

All employees requesting a leave extension should do so in writing, if possible, two weeks prior to the end of their scheduled leave. Failure to comply with these notice requirements will be grounds for, and may result in, deferral or denial of the requested leave until the employee complies with these requirements. [A Request for Leave Form and Notice of Need for Extension Form are available from Human Resources.]

**VII. Notice of Eligibility and Rights & Responsibilities**

The Company will provide employees who request FMLA leave with the Notice of Eligibility and Rights & Responsibilities (Form WH-381) within five (5) business days of a request for leave. At the same time, employees will be provided with a statement of their Rights and Responsibilities (Notice 1420). The Medical Certification Form (WH380E/F) will also be given to the employee at this time if applicable. All of these forms are available from Human Resources.

**VIII. Medical Certification Is Required**

Employees who request FMLA leave due to their own, or a family member’s serious health condition, must submit a Medical Certification Form (WH-380E/F) completed by the health care provider to support the leave request. This form is available from Human Resources. The Medical Certification form should be returned to the Company within fifteen (15) calendar days after it is requested, or as soon as possible under the circumstances. If the Medical Certification Form is not satisfactory, an employee will be told of the deficiencies, in writing, and given seven (7) calendar days to update the Form. If the medical information is inadequate, Human Resources may contact the employee’s health provider directly to authenticate or clarify information on the certification. Human Resources may directly contact the employee’s health provider, after receiving the employee’s permission, to get more complete information regarding the nature of the ailment, the duration of the leave, the need for intermittent leave, etc. Failure to submit a complete and sufficient Medical Certification may result in deferral or denial of the requested FMLA leave. If the Company reasonably doubts the medical certification initially provided, the company, at its expense, will require an examination by a second healthcare provider designated by the company. If the second healthcare provider’s opinion conflicts with the original medical certification, the company, at its expense, will require a third, mutually agreeable, healthcare provider to conduct an examination and provide a final and binding opinion.

**IX. Designation Notice**

Within five (5) business days (absent extenuating circumstances) of having enough information to determine whether the requested leave is FMLA eligible, the Company will provide a Designation Notice (WH-382), informing the employee whether or not leave is designated FMLA leave, and the amount of leave that will be designated, if known. This designation may be retroactive. Employees absent due to their own medical condition will be required to provide medical certification of their ability to return to work. Employees will be provided with the essential functions of their job, or a Job Description with that information, as part of the Designation Notice. Employees failing to provide the fitness-for-duty certification based on these essential job functions cannot resume work until such certification is provided. [A Fitness for Duty Form is available from Human Resources.]

In the sole discretion of the Company, any leave that qualifies as FMLA leave may be designated as FMLA leave, regardless of whether all possible obligations are met. For example, the Company may designate a leave as FMLA leave without having a specific diagnosis or requiring a complete medical certification or a consultation with a health care provider. The Designation Notice is available from Human Resources.

**X. Duration of Family and Medical Leave**

Eligible employees will be entitled to up to a cumulative maximum of 12 workweeks of FMLA leave within a 12 month leave period, or up to 26 workweeks of leave during any single 12 month period when the leave time includes servicemember care leave alone or in combination with regular FMLA qualifying leave. Any combination of FMLA leave may not exceed the maximum limit of 26 workweeks (see policy for Military FMLA below).

Spouses who both work for the Company are entitled to a combined total of 12 weeks leave in a 12 month period for the birth, adoption or foster care placement of their child, or to care for a parent with a serious health condition. In the case of servicemember care leave, if both spouses work for the Company, they would only be entitled to:

(1) A combined total of 26 workweeks for servicemember care leave; or

(2) A combination of 26 weeks for leave for servicemember care and for care due to the birth, adoption, or placement of a child or the care of a sick parent. (Of these 26 weeks, only 12 weeks could be used for care due to the birth, adoption or placement of a child or the care of a qualifying relative).

**XI. Reporting While on Leave**

While an employee is out on leave, they must keep the company up to date with the status of their leave, and their intent to return to work. Depending on the nature and length of the absences, the employee may be required to check in at varying intervals of either every couple of weeks, or monthly. In addition, the employee must give notice as soon as practical (ideally within 2 business days) if the dates of the leave change, are extended, or were unknown initially.

[Note: This is only a suggested method for leave reporting. Employers may establish different intervals for reporting, as long as it is not unduly burdensome on the employee or enforced inconsistently.]

**XII. Intermittent and Reduced-Schedule Leave**

Leave because of a serious health condition, or either type of family military leave, may be taken intermittently (in separate blocks of time due to a single health condition) or on a reduced-schedule leave (reducing the usual number of hours worked per workweek or workday), if medically necessary. If leave is unpaid, the company will reduce the employee’s salary based on the amount of time actually worked. In addition, while an employee is on an intermittent or reduced-schedule leave, the company may temporarily transfer the employee to an available alternative position that better accommodates the recurring leave and that has equivalent pay and benefits, if the leave is foreseeable based on planned medical treatment. Intermittent leave should be scheduled to cause as little disruption in the workplace as possible.

An eligible employee may use intermittent or reduced schedule leave after the birth of placement of a healthy child for adoption or foster care only if the Company agrees.

**XIII. Recertification**

An employee may be asked to recertify a serious health condition every 30 days, if the employee is absent during that period. If the medical certification indicates that the minimum duration of the condition is more than 30 days, the Company will wait until that minimum duration expires before requesting a recertification. A recertification may be requested in less than 30 days if:

* The employee asks for an extension of leave;
* Circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications); or
* The employer receives information that casts doubt upon the employee’s stated reason for the absence or the continuing validity of the certification.

Employees will be required to recertify certified lifelong medical certifications every six (6) months.

**XIV. Return to Work**

In general, employees returning to work from FMLA leave will be returned to their same, or an equivalent, position held prior to the leave. If the employee does not return to their original position, or an equivalent one, as soon as they are able, the Company will consider the employee to have voluntarily resigned unless they are unable to return due to medical reasons and are therefore participating in the interactive process under the Americans with Disabilities Act (ADA). Employees who believe their leave may need to be extended beyond the time covered under FMLA, or who wish to initiate the interactive process under the ADA related to job accommodations must contact Human Resources as soon as possible when they become aware of the concern in order to review their options.

Certain “key employees” (among the highest paid 10%) may not be eligible to be reinstated to the same, or equivalent, position at the conclusion of their FMLA leave. The Company will notify such employees of their “key employee” status and the conditions under which they may be denied reinstatement, if applicable, at the onset of FMLA.

Military Family and Medical Leave Act Policy

**I. Who the Policy Covers**

To be eligible for leave under the military Family and Medical Leave Act provisions, an employee must be eligible for traditional FMLA leave and either be:

* The parent, spouse, son or daughter of a servicemember, who is on active duty (or has been notified of an impending call or order to active duty); or
* The spouse, son, daughter, parent or next of kin (nearest blood relative) of a covered servicemember undergoing medical treatment, recuperation, or therapy, who is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

**II. Policy**

Under the military FMLA policy, the Company provides eligible employees with:

1. Up to 12 workweeks of unpaid, job-protected leave in a 12 month period because of a qualifying exigency; or
2. Up to 26 workweeks of leave for eligible employees within a single 12 month period to care for a covered servicemember with a serious illness or injury.

Unless specifically stated otherwise, procedures, notices and rights and responsibilities stated above as part of Company policy for traditional FMLA apply to military FMLA.

**III. Reasons for Leave**

Eligible employees can take leave for any of the following reasons:

* Because of any qualifying exigency arising out of the fact that a son, daughter, spouse, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty).
	+ Qualifying exigencies may include:
		- Short-notice deployment (seven or less calendar days)
		- Attending certain military events and related activities
		- Childcare or school activities
		- Addressing certain financial and legal arrangements
		- Counseling
		- Periods of rest and recuperation for the military member (up to 15 calendar days of leave, dependent on orders)
		- Attending post-deployment activities (available for up to 90 days after the termination of the covered military member’s covered active duty status, and to address issues arising from death of military member)
		- Attending to parental care needs arising from covered active duty or call to duty (arrange for alternative care for a parent of a military member, provide urgent or immediate care, admit or transfer to a care facility, or attend non-routine caregiver meetings with care facility staff)
* To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin (nearest blood relative) of the covered service member.

**IV. Who Is the Covered Servicemember?**

Qualifying Exigency:

For Regular Armed Forces members, “covered active duty or call to covered active duty status” means duty during the deployment of the member with the Armed Forces to a foreign country (outside of the United States, the District of Columbia, or any territory or possession of the United States, including international waters).

For a member of the Reserve components of the Armed Forces (members of the National Guard and Reserves), “covered active duty or call to covered active duty status” means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation.

Caregiver Leave:

For a current member of the Armed Forces, including a member of the National Guard or Reserves, the member must be 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 incurred in the line of duty, or aggravated by such service.

For a covered veteran, he or she must be undergoing medical treatment, recuperation or therapy for a serious injury or illness incurred in the line of duty, or aggravated by such service. Covered veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves) and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. An eligible employee must begin leave to care for a covered veteran within five years of the veteran’s active duty service, but the single 12 month period may extend beyond the five year period.

**V. Notice of Leave**

When the need for military FMLA is foreseeable, the employee should provide notice as soon as practical. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, it should be practical for the employee to provide notice of the need for leave within 1 (one) to 2 (two) business days. [A Request for Leave is available from Human Resources.]

**VI. Notice of Eligibility and Rights & Responsibilities**

Employees will receive the same Eligibility Notice (WH-381) and Notice of Rights and Responsibilities (1420) when requesting military FMLA leave as is given under traditional FMLA. The Company will provide employees who request military FMLA leave with the appropriate certification form for Exigency Leave (WH-384) or Military Caregiver Leave (WH-385) at this time. These forms are available from Human Resources.

**VII. Duration of Military Family and Medical Leave**

Eligible employees using qualifying exigency leave will be entitled to up to a cumulative maximum of 12 workweeks of FMLA leave within a 12 month leave period [rolling back].

Employees using military caregiver leave alone, or military caregiver leave in combination with traditional FMLA qualifying leave, or qualifying exigency leave, may take up to 26 workweeks of leave during any single 12 month period. The amount of leave taken for traditional or qualifying exigency is limited to a total of 12 workweeks; the difference may be military caregiver leave. The 26 workweeks run on a separate FMLA year that commences with the first day leave is taken and can run until the end of the 12 month period. Unused military caregiver leave is forfeited at the end of the 12 month period. With regard to the military caregiver leave, spouses working for the company are limited a combined total of 26 workweeks for military caregiver leave alone. The same 26 workweek limitation applies when in combination with any other 12 workweek FMLA leave.

Recordkeeping Requirements

The Company will keep FMLA records for at least three years.

**I. Content of Records**

Records will include the following:

* Basic payroll and identifying employee data, including:
	+ Name, address, and occupation,
	+ Rate or basis of pay and terms of compensation,
	+ Daily and weekly hours worked each pay period,
	+ Additions to and deductions from wages, and
	+ Total compensation paid.
* Dates FMLA leave is taken (which must be designated in the records as FMLA leave),
* Hours of FMLA leave used if leave is taken in increments of less than a day,
* Copies of FMLA notices provided by an employee to the employer and by the employer to its employees concerning the FMLA (including returned medical certifications, any written request for leave from the employee as well as any required notice provided to the employee concerning FMLA leave),
* Any documents, including electronic records, describing employee benefits or employer policies and practices regarding the taking of paid or unpaid leave;
* Premium payments for employee benefits, and
* Records of any dispute between the employer and an employee regarding the designation of leave as FMLA leave, such as emails or other written statements regarding a disagreement on the designation of the employee’s FMLA leave request.

**II. Confidentiality of Records**

Records and documents relating to FMLA medical certifications and recertifications of employees or their family members are treated as confidential medical records. Such records will be maintained in separate files from personnel files, in conformance with the confidentiality requirements of the Americans with Disabilities Act (ADA), as amended, if applicable, and the Genetic Information Nondiscrimination Act (GINA), if applicable. Supervisors and managers may be informed of necessary restrictions on work duties and necessary accommodations. First aid and safety personnel may be informed, as appropriate, if the employee’s condition might require emergency treatment. Government officials investigating compliance with the FMLA (or other pertinent law) will be provided relevant information upon request.

US DOL Forms

(*source:* [*https://www.dol.gov/agencies/whd/fmla/forms*](https://www.dol.gov/agencies/whd/fmla/forms)*)*

**I. Notice Forms**

The Company will use the following forms to provide the notices required under the FMLA.

1. [General Notice, the FMLA poster](https://www.dol.gov/agencies/whd/fmla/posters) – satisfies the requirement that every covered employer display or post an informative general notice about the FMLA. This notice can also be used by employers with eligible employees to satisfy their obligation also to provide FMLA general notice to employees in written leave guidance (e.g., handbook) or individually upon hire.
2. [Eligibility Notice and Rights and Responsibilities, form WH-381](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-381.pdf) – informs the employee of his or her eligibility for FMLA leave or at least one reason why the employee is not eligible. Informs the employee of the specific expectations and obligations associated with the FMLA leave request and the consequences of failure to meet those obligations.
3. [Designation Notice, form WH-382](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-382.pdf) – informs the employee whether the FMLA leave request is approved; also informs the employee of the amount of leave that is designated and counted against the employee’s FMLA entitlement. The Company will also use this form to inform the employee that the certification is incomplete or insufficient and additional information is needed.

**II. Certification Forms**

*Certification of Healthcare Provider for a Serious Health Condition*

* [Employee’s serious health condition, form WH-380-E](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-380-E.pdf) – use when a leave request is due to the medical condition of the employee.
* [Family member’s serious health condition, form WH-380-F](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-380-F.pdf) – use when a leave request is due to the medical condition of the employee’s family member.

*Certification of Military Family Leave*

* [Qualifying Exigency, form WH-384](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-384.pdf) – use when the leave request arises out of the foreign deployment of the employee’s spouse, son, daughter, or parent.
* [Military Caregiver Leave of a Current Servicemember, form WH-385](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-385.pdf) – use when requesting leave to care for a family member who is a current service member with a serious injury or illness.
* [Military Caregiver Leave of a Veteran, form WH-385-V](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh-385-V.pdf) – use when requesting leave to care for a family member is who a covered veteran with a serious injury or illness.