

## **PLS 502 Public Human Resources Administration**

### **Exercise: Policy and Procedures Manuals: FMLA**

**Directions:** Read the attached family and medical leave policies from various organizations' policy and procedures manuals. You will then be assigned to groups of no more than six people. Pick a spokesperson to record your answers and report out. As a group, try to reach consensus on the answers to the following questions:

- What are the similarities in intent for the different policies?
- How do the policies differ in their intent?
- Do the policies differ in terms of the responsibilities they place on workers or management?
- What is missing from the policy statements?
- If you were to change the policy statements, how would you improve them?

## LEAVE POLICY

### ANNUAL VACATION LEAVE

Employees of the New Hanover County Board of Education are granted annual vacation leave subject to the provisions of the controlling North Carolina General Statutes including Senate Bill 458 of the 1983 regular session; the rules and regulations set forth by the State Board of Education (.0106); and the following requirements of the New Hanover County Board of Education:

1. Instructional personnel -- academic, exceptional children, vocational, media and instructional assistants -- may elect to take annual vacation leave on workdays other than those "Designated Workdays" which are specified in the official calendar. However, "leave shall be taken only upon authorization of the employee's immediate supervisor..." [.0106 (b) (2) (A)]. Immediate supervisors may designate workdays for their school or department consistent with State Board Policies.
2. Annual Vacation Leave is not granted to hourly employees.
3. Accumulated Annual Vacation Leave not to exceed thirty workdays will be accepted from state agencies or institutions.

### SICK LEAVE, SUBSTITUTE TEACHER REGULATIONS, LEAVE OF ABSENCE WITHOUT PAY, MILITARY PAY

Employees of the New Hanover County Board of Education are granted other types of leave according to the controlling North Carolina General Statutes; the rules and regulations set forth by the State Board of Education regarding Sick Leave Regulations for All School Employees; Substitute Teacher Regulations; Leave of Absence Without Pay; and Military Leave; and the following requirements of the New Hanover County Board of Education:

#### 1. Family Leave (without pay)

A regular employee shall be granted a leave of absence up to one calendar year at the birth or adoption of a child. Written requests shall carry the written approval of the principal or central office department head and be received by the Personnel Office at least 30 calendar days in advance. Any exceptions must be shown to be due to unforeseeable circumstances. When the dates for Family Leave requests are made, employees are encouraged to consider the welfare of the students and the need for continuity of instruction to the extent possible.

When family leave is granted, an effort will be made to return the employee to a comparable position.

## 2. Education Leave (without pay)

Educational Leave may be granted, generally for only one year, for the purpose of graduate work, certification or professional study which is intended to enhance a regular employee's professional growth in a field related to his/her duties in the school system. Written requests shall include specific plans for the work to be accomplished and appropriate proof that he/she has been accepted by an appropriate institution. Written requests shall carry the written approval of the principal or central office department head and be received by the Personnel Office at least 30 calendar days in advance. Any exceptions must be shown to be due to unforeseeable circumstances.

Educational Leave requires prior approval of the Superintendent or designee and the Board of Education.

When Educational Leave is granted, an effort will be made to return the employee to a comparable position.

The Board of Education does not offer any monetary compensation to the employee while on Educational Leave nor does the Board pay any employee costs to the Retirement System.

## 3. Medical Leave (without pay)

Medical Leave may be granted upon written request and supporting documentation from a physician licensed to practice medicine. Approval of the Superintendent or his designee and the Board of Education is required.

## 4. Extenuating Circumstances (without pay)

The New Hanover County Board of Education recognizes that there are times in the lives of its employees when extenuating circumstances occur that require time away from work. Such circumstances include illnesses and other events that happen to family members and/or others for whom the employee has responsibility.

Therefore, the Board of Education may authorize leaves of absence up to one calendar year for employees who have served a minimum of three consecutive years. Such leaves do not include an extension of family leave unless there is documented evidence of illness of the child.

Written requests shall carry the written approval of the principal or central office department head and should be sent to the superintendent (or designee) who will make a recommendation to the Board. When Extenuating Circumstances Leave is granted, an effort will be made to return the employee to a comparable position.

5. Other Leave (without pay)

Other short term leaves of less than one year may be granted administratively by the Superintendent or his designee. Requests should be made in writing and carry the approval of the principal or central office department head.

NOTE: Employee Benefits Suspended While On Leave Without Pay

While a regular employee is on leave without pay, he/she is not eligible for sick leave, annual vacation leave, longevity, disability salary continuation, retirement, or hospitalization insurance. However, employees who desire to maintain hospitalization may do so if they pay both the employee's and employer's premium, quarterly and in advance.

FAILURE TO RETURN TO WORK AND/OR FAILURE TO RESPOND TO ADMINISTRATIVE PROCEDURES OF NOTIFICATION AT THE END OF AN AUTHORIZED LEAVE SHALL BE JUDGED A VOLUNTARY RESIGNATION.

Adopted: 05/09/84

Revised: 04/09/91

## SCOPE

Only employees budgeted in regular full-time or part-time positions as of January 1 of each year are eligible to participate in this program.

## POLICY

Eligible full-time employees may be paid for up to eight (8) hours of Community Services Leave between January 1 and December 31 of each calendar year. Employees budgeted on a part-time basis will have their leave prorated based on the number of hours for which the position has been budgeted. Leave must be used for participation in school activities with their children or in volunteering their services to their community during normal working hours.

## PROCEDURES

All leave requests must be approved by the supervisor prior to the employee taking such leave.

Examples of acceptable services under this policy would include, but not be limited to: attending teacher-parent conferences; attending school assemblies, attending school special events; participating in an established program as either a tutor or mentor; volunteering for special projects in a United Way Agency or other community based program, participating in emergency management activities; and other activities that serve, promote and enhance the community.

In tracking the number of hours of leave an employee is paid each calendar year, the system will use the date of the pay check containing paid community services leave as the date of use. For example, if an employee performs two hours community service during the last week of the calendar year and is paid that leave in a paycheck in January of the new calendar year, the leave will count against the number of hours allowed in the new calendar year.

No leave balance will be carried over to subsequent years. Community Services Leave is non-cumulative and an employee will not be paid for any outstanding balance of this leave upon termination.

## **Family and Medical Leave**

### **PURPOSE**

The purpose of this policy is to ensure family and medical leave is provided in compliance with the Family and Medical Leave Act of 1993 (FMLA), which entitles eligible employees up to 12 weeks of unpaid leave in a 12-month period for certain family and health condition reasons, with pre-existing health insurance coverage being maintained during the leave and reinstatement to the same or an equivalent position when the leave is concluded.

## SCOPE

This policy applies to “eligible employees” as defined by the FMLA: An employee who has been employed with the County for at least 12 months (not necessarily consecutive) and who has worked a minimum of 1,250 hours during the 12-month period immediately preceding the start of the leave.

## POLICY

### Qualifying Reasons for FMLA Leave

Employees are entitled to take FMLA leave for the following reasons:

- To care for the employee’s child after birth or placement for adoption or foster care, within 12 months of the birth or placement;
- To care for the employee’s immediate family member who has a serious health condition;
- To take medical leave when the employee is unable to work because of a serious health condition.

*In the application of the FMLA, “immediate family member” is the eligible employee’s child, parent or spouse. “Child” refers to a biological, adopted, or foster child; a stepchild; a legal ward; or a child for whom the employee (standing in loco parentis) has day-to-day responsibility, provided that such child is under age eighteen (18) or over age eighteen (18) if said child is incapable of self-care because of a mental or physical disability, as defined under the Americans with Disabilities Act. “Parent” refers to the employee’s biological, adoptive, or foster parent, or someone who stood in loco parentis to the employee when the employee was a child. “In loco parentis” means “in the place of a parent, instead of a parent, charged with a parent’s rights, responsibilities and duties.” The County may request the employee to provide documentation of such a relationship. Parents-in-law are not included in the FMLA definition of “parent.” “Spouse” is a husband or wife as recognized under North Carolina law.*

*The term “serious health condition” includes any illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health-care provider, which includes a period of incapacity of more than three (3) consecutive calendar days and either treatment two or more times by a health-care provider or treatment on at least one occasion by a health-care provider that results in a regimen of continuing treatment.*

### Leave Entitlement and Options

Under the FMLA, eligible employees are entitled to up to 12 workweeks of unpaid leave. This policy gives eligible employees the option of using paid personal or sick leave, as appropriate, as well as unpaid leave, against the FMLA leave entitlement.

Any use of leave as FMLA-designated leave, paid or unpaid, within the applicable 12-month period shall be deducted from the employee’s FMLA leave entitlement. The method used in determining the 12-month period in which the employee is entitled to this leave is the

“rolling year” measured backward from the date an employee uses any FMLA leave. Under this method, each time an employee takes FMLA leave, the remaining leave entitlement would be any balance of the 12 weeks that has not been used during the immediately preceding 12 months.

Sick leave taken on an FMLA basis must be for the employee’s own disability due to a serious health condition or to care for an immediate family member who has a serious health condition. Personal leave or unpaid leave may be used for any of the “qualifying reasons” listed above.

Any Worker’s Compensation-related leave designated as FMLA leave within the applicable 12-month period shall be deducted from the FMLA leave entitlement.

A husband and wife who are both County employees and eligible for FMLA leave are limited to a combined total of 12 workweeks of FMLA leave during the applicable 12-month period for the birth or placement of a child for adoption or foster care, the care of the child after birth or placement, or for the care of a parent with a serious health condition. Any period of disability before or after the birth of a child would not be subject to the combined limit.

#### Intermittent or Reduced Work Schedule Leave

FMLA leave does not have to be taken as a continuous 12-week leave. An employee may request intermittent time off or a reduced work schedule in cases of a serious health condition of the employee or immediate family member, when medically necessary. Leave for the birth, adoption or foster care of a child does not qualify for an intermittent or reduced schedule leave unless the supervisor and employee agree otherwise.

Intermittent leave is taken in separate blocks of time because of a single illness or injury and may include leave for periods from an hour or more to several weeks. Examples of intermittent leave include leave taken on an occasional basis for medical appointments or leave taken several days at a time spread over a period of months, such as for chemotherapy. A reduced work schedule leave is a leave schedule that reduces an employee’s usual number of hours per work week or work day, generally from full-time to part-time.

In those situations where intermittent leave or a reduced work schedule leave is approved, the hours missed from the employee’s usual workweek will be charged against the FMLA 12-week entitlement on a pro rata basis. Intermittent leave example: If an employee who normally works five days a week takes off one day, the employee would have used 1/5 of a week of FMLA leave. Reduced work schedule leave examples: An employee who works half-days on a reduced schedule will have used 1/2 of a FMLA leave week; an employee who normally works 30 hours/week, but works a reduced schedule of 20 hours/week will have used 1/3 of a FMLA week.

After consultation with the Human Resources Director or designee, a department head may temporarily reassign an employee on an intermittent or reduced work schedule leave to an alternative position which better accommodates the recurring periods of leave.

The County may discipline or dismiss an employee on an intermittent or reduced work schedule leave for poor performance or for excessive absenteeism unrelated to the basis for the FMLA leave.

A reduced work schedule which does not make use of any paid leave to make up the difference between the regular schedule and the temporary reduced work schedule may result in a pro rata reduction in the employee's paid leave accrual and benefits.

Exempt employees who use unpaid FMLA leave on an intermittent or reduced work schedule basis will have their salary reduced according to the hours of leave without pay used, without compromising their exempt status under the Fair Labor Standards Act.

#### Status of Benefits While on FMLA Leave

Employees may retain coverage under the County's group health and dental insurance plans for the duration of FMLA leave. The County will continue to pay the employer portion of these insurance premiums. Employees using paid FMLA leave will continue to have their portion of the insurance premiums payroll-deducted. Employees using unpaid FMLA leave are responsible for payment of the employee portion of the insurance premiums under the same conditions which apply to employees in other types of leave without pay.

Disability insurance premiums under the County's group long-term disability plan shall be maintained by the County for employees on unpaid FMLA leave under the same conditions as exist for employees on other unpaid leave.

Continuation of retirement contributions is not mandated by the FMLA. All terms and conditions relevant to participation in the retirement system shall be in accordance with the rules established by the N. C. Local Governmental Employees' Retirement System or the N. C. Law Enforcement Officers' Retirement Fund.

Continuation of employee financed elective insurance benefits shall be pursuant to agreements between the employee and the respective benefit provider.

Personal and sick leave accruals and retirement service credit will continue during any period of paid leave. However, no leave or retirement service credit will accrue during any period of leave without pay.

#### Job Protection

Employees returning to work at the conclusion of FMLA leave will be restored to their former position, or one with similar pay, benefits and terms and conditions of employment they enjoyed prior to the FMLA leave.

If there are reductions in force while the employee is on FMLA leave, and the employee would have lost his/her position if not on leave, except as provided under the reduction in force policy on reinstatement, there is no obligation to restore the employee to his/her former or equivalent position.

## PROCEDURES

### Employee Responsibility

Regardless of the reason for the FMLA leave or whether leave is paid or unpaid, the employee is responsible for properly requesting and using FMLA leave as follows:

- Inform supervisor as soon as practicable of intent to use FMLA leave.
- Discuss plans with supervisor to assure department operations are not unduly disrupted, if possible.
- Provide information about the reasons for paid leave (including personal leave) which is sufficient for a determination of whether the paid leave would qualify as a deduction against the 12-week entitlement under the FMLA.
- Submit a completed New Hanover County Leave Request form to supervisor as soon as practicable before taking the leave, considering the facts of the case.
- Provide the appropriate medical certification (or legal certification of adoption or foster child placement) as soon as practicable before taking the leave, considering the facts of the case, but no longer than 15 days after receipt of FMLA leave information packet.
- Continue to timely pay premiums on health and dental insurance and optional benefits programs, if continued coverage during the leave is desired.
- Provide periodic reports to supervisor, as instructed, regarding intent to return to work.
- Provide reasonable notice of a need to extend FMLA leave beyond the planned conclusion of such leave.
- Provide a fitness for duty certification prior to return to work, including limitations, if any, as required.

Leave Request Notice: It is expected that requests for leave are made well in advance of the leave; however, it is understood there will be some cases in which the request cannot be made in advance. Whether proper notice has been given will be decided on a case-by-case basis, following notice requirements prescribed in the FMLA. If the employee fails to give proper notice and has no reasonable excuse, the County may delay the leave. If the employee fails to provide notice that the leave was for FMLA reasons and to present medical certification to that effect within the prescribed time period, the employee may not be entitled to the protections of the FMLA and may be subject to disciplinary actions.

### County Responsibility

It is the County's responsibility to designate leave as FMLA leave. This obligation supersedes an employee's desire not to use his or her FMLA entitlement. The key to designating FMLA leave is the qualifying reason(s), not the employee's decision or reluctance to use FMLA leave. The designation must be based on information obtained from the employee or an employee's representative. FMLA leave designation is a responsibility shared between the employee's department and the Human Resources Department, as follows:

The supervisor/department director has responsibility for the following:

- Receive notice of employee's intent to use FMLA leave, or;

- Absent notice of intent, when an employee is on paid leave, after a period of ten workdays, require the employee to provide sufficient information to establish whether the leave is for a FMLA-qualifying reason (unless the absence is known to be for a non-FMLA qualifying reason, e.g. vacation).
- Consult immediately with the Human Resources Department about the application of the FMLA to the circumstances presented.
- Upon receipt of employee's notice, give the employee the appropriate leave request forms and notice documents, with instruction to timely return completed forms.
- Clearly communicate to the employee what the department's expectations for the employee's continuing contact or notice regarding return to work.
- Keep the Human Resources Department informed of any developments.
- Design intermittent or reduced work schedules if requested by the employee and if feasible.
- Work with the employee upon reinstatement to facilitate a smooth transition back into the work environment.

The Human Resources Department has responsibility for the following:

- Receive notice of intent or leave request, medical certification and supporting documentation.
- Absent notice of intent, review time and attendance reports to identify potential FMLA situations and make contact with department representative for follow-up.
- Designate leave as FMLA leave once it is confirmed that the leave is being taken for qualifying FMLA reason and give written notice of designation to employee in accordance with the FMLA deadlines for such notice.
- Notify, or ensure supervisor/department director notifies, employee of specific rights, including those relating to the continuation of benefits and reinstatement, as well as employee obligations and the consequences of a failure to meet these obligations.
- Advise supervisor/department director on the application of the FMLA regulations to the employee's situation.
- Maintain records of FMLA usage and remaining entitlement.
- Assist supervisor/department director on arrangements for intermittent or reduced schedule, when required.
- Maintain in various locations throughout the County organization posting about the FMLA.
- Maintain all records related to the employee's leave under FMLA (keeping all medical documentation separate from the employee's personnel file).
- Notify, or ensure insurance bill sent by Finance notifies, the employee facing cancellation of insurance coverage in writing at least fifteen (15) days before coverage is to cease.

Provisional Designation: Where leave must begin prior to confirmation of an FMLA qualifying event, the leave will be provisionally designated and so communicated to the employee in writing. Upon receipt of the requested information or medical certification which confirms that the leave either is or is not for an FMLA reason, the provisional designation will either be withdrawn or made final by providing written notice to the employee.

Retroactive Leave Designation: FMLA leave can be designated retroactively in only two (2) instances: if the employee was absent for an FMLA reason and the supervisor did not learn of it until after the employee's return to work, provided the employee so notifies the supervisor within two (2) working days of the return to work, or if the supervisor has been provided information concerning the reason for the leave, but has been unable to confirm FMLA entitlement, provided a provisional designation of FMLA qualification has been communicated to the employee.

### Required Medical Certification

For leaves related to serious health conditions or child birth, the employee is required to provide medical certification(s) from the employee's or family member's qualified health care provider.

*"Qualified health care provider" may be any licensed physician, dentist, podiatrist, clinical psychologist or optometrist authorized to practice in North Carolina. In some cases, other health care providers may be recognized for the purpose of awarding leave under the FMLA.*

Re-certifications: The County may require medical re-certifications every thirty (30) days to justify the ongoing need for time off or modified work schedules.

Second and Third Medical Opinions: The County may require a second medical opinion at the County's expense. In the case of conflicting opinions, the opinion of a third health care provider, agreed upon by both employee and the Human Resources Director or his designee and paid by the County, shall be final.

Fitness for Duty/Return to Work Certification: For some job classifications, the County may require the employee obtain a fit-for-duty certification from the health care provider, at the employee's expense. If an employee fails to provide a requested such certification, reinstatement will be delayed until the employee complies. If the certification is not submitted within fifteen (15) calendar days of the request where practicable, reinstatement may be denied. The County reserves the right to have the employee examined by another health care provider, at the County's expense.

Certification of Treatment Scheduling: The employee must make reasonable efforts to schedule any medical treatments so as not to unduly disrupt the operations of the employee's department or work unit. During the course of the treatment and as the Human Resources Director or designee deems appropriate, the employee may be required to provide certification from the appropriate health care provider of the unavailability of treatment during non-work time, or at times that are less disruptive to the operations of the employee's unit.

### Other Certifications

Family Relationship Certification: The County may require an employee to certify the family relationship if the need for leave is pursuant to the adoption, foster care placement, or birth of a child or to care for the employee's parent.

### Abuse of FMLA Leave

The Human Resources Director or designee shall review, investigate and resolve suspected cases of bad faith, fraud or abuse of the FMLA leave program. Abuses of the FMLA leave program may result in, but are not limited to, revocation of the leave, refusal to restore the employee to his/her job; recovery of County costs for paid leave and insurance benefits, and disciplinary action up to and including dismissal.

Outside employment while on FMLA leave will be treated the same as when an employee is discovered to have outside employment while on any other paid or unpaid leave.

### Extension of Leave

Employees may extend the date of return from FMLA leave to the extent they have FMLA leave entitlement available. A request for an extension must be accompanied by new appropriate medical or legal certification.

### Failure to Return from Leave

An employee who will not be returning to work at the conclusion of FMLA leave must notify the supervisor in writing as soon as practicable. In the absence of written notification, failure to return from leave shall be interpreted as a resignation.

If applicable, any benefit entitlements based upon length of service shall be calculated as of the employee's last paid day.

County costs of any payments made to maintain the employee's health, dental or long-term disability benefit coverage when on unpaid FMLA leave shall be recovered if an employee fails to return to work at the end of his/her approved FMLA leave, or at the end of approved medical leave without pay under the County's leave without pay policy, whichever is later, unless the reason the employee does not return is due to the serious health condition of the employee or a family member or other circumstances beyond the employee's control. The Human Resources Director or designee may request certification of the reasons for the employee's failure to return to work.

### **Smallpox Vaccination Leave**

The following provisions apply to employees who suffer adverse medical reactions due to having had a work-related smallpox vaccination or having been exposed to an employee who has had a work-related smallpox vaccination, as covered by the Workers' Compensation Act.<sup>1</sup>

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<sup>1</sup> Workers' Compensation Act, G. S. § 97-53 (29): "Infection with smallpox, infection with vaccinia, or any adverse medical reaction when the infection or adverse reaction is due to the employee receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act...(to be codified at 42 U. S. C. § 233), or when the infection or adverse medical reaction is due to the employee being exposed to another employee vaccinated as described in this subdivision."

administrator will reimburse either the dentist or the employee for the costs of dental procedures up to the maximum limits as specified in the dental plan. Current coverage limits, plan information, forms or assistance in changes to coverage may be obtained from the Human Resources Department.

Originally Approved: July 1, 1997	Revised: January 1, 2004
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## LEAVES OF ABSENCE

The County will grant leaves of absence to employees according to the criteria established for each type of leave. Leaves include: Administrative Leave, Family-Medical Leave, Extended Medical Leave, Extended Family Leave, Military, and Disaster Response Leave.

### **ADMINISTRATIVE LEAVE**

Administrative Leave is LWOP and may be granted for compelling personal reasons after the first 90 calendar days of employment. The length of the leave will be determined by the circumstances surrounding the situation. In any case, Administrative Leave will not exceed 30 calendar days. Each case will be considered on its own merit.

Written request must be made to the department director stating the reason for the leave and the date that the County can expect the employee to return. Final approval for the leave will be made by the department director and the Human Resources Director.

All benefits will remain intact until the employee returns to active employment. While the employee is on Administrative Leave, they are responsible for all medical, dental, and life insurance premiums for individual and dependent coverage. Should an employee decide not to return at the end of Administrative Leave, they will be paid for all vacation leave and 25% of accrued sick leave.

Employees returning from Administrative Leave will experience an adjustment to their aggregate date, County service date, and Annual Review Date (ARD) equal to the amount of time they were actually off the County's payroll.

Failure to return from administrative leave days will be considered a resignation. If an employee who is on Administrative Leave decides to resign, a letter of resignation stating that the employee wishes to terminate their employment is requested.

### **FAMILY-MEDICAL LEAVE**

#### **Eligibility**

A regular full or part-time employee is eligible for Family-Medical Leave if he/she has:

1. At least one year of cumulative service in a permanent position with the County

(if an employee has completed the first 90 days of employment but does not have enough service to be eligible for Family-Medical Leave, they may use Extended Medical or Extended Family Leave) and

2. Worked a minimum of 1040 hours (including overtime) with the County in the 365 calendar days prior to the beginning of the requested leave.

### **Purpose**

The County will grant up to 12 weeks of Family-Medical Leave to all eligible employees in the event of the employee's serious health condition, birth of a child or placement of a child for adoption or foster care, and/or caring for the employee's child, spouse, or parent who has a serious health condition. Family-Medical Leave is a leave without pay unless the employee elects to use accrued benefit hours.

### **Definition of Serious Health Condition**

A serious health condition is defined as an illness, injury on or off the job, impairment, or physical or mental condition of an employee, spouse, or child that involves:

1. Any period of incapacity or treatment connected with in-patient care (overnight stay) in a hospital, hospice or residential medical facility, or home confinement.
2. Any period of incapacity requiring the absence of more than three calendar days from work, school, or other regular daily activities and that also involves continual treatment by (or under supervision of) a health care provider; or
3. Continuing treatment by (or under the supervision of) a health care provider for prenatal care, or 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.

### **Duration**

An employee will be granted 12 weeks of leave during the year beginning on the first date Family-Medical Leave is taken. Leave may be intermittent for illnesses but must be used consecutively for the birth or adoption of a child. Leave must be used consecutively for up to 12 weeks by the mother for the birth of a child. For the father, 12 weeks of leave will be granted until the child is one year of age. For the adoption of a child, the 12 weeks of leave will be granted for either and/or both parents until the first anniversary of the child's placement. At least one year must elapse from the beginning of one 12 week Family-Medical Leave period and the beginning of another.

### **Required Forms**

Human Resources Department forms and required documentation to support the request for Family-Medical Leave should be signed by the employee and the physician at least 30 days prior to the beginning leave and submitted to the Human Resources Department. Such forms include the Request for Leave Form and the Personnel Action Request Form.

In more urgent situations, such forms should be signed as soon as possible to help keep insurance benefits intact. The dates of the entire leave must be supported by updated documentation as necessary. The first day of leave is the date designated on the medical or legal documentation or the day following the last day worked.

When employees return to work, they must present a physician's return-to-work statement that supports their return to work. Any restrictions placed on the employee must be included in the statement. If the County is able to reasonably accommodate the employee's restrictions, the employee may return to work.

### **Temporary Transfer to Another Position**

To better accommodate recurring periods of leave, an employee requesting intermittent leave or reduced work schedule because of an illness, may be temporarily transferred to another position for which they qualify, while maintaining equivalent pay and benefits.

### **Extension of Leave**

If an employee is unable to return to work or requests additional time for family bonding at the end of the 12 week period, the employee will be placed on Extended Medical Leave or, if approved by the department director, Extended Family Leave, depending upon the circumstances of the extension.

### **Use of Sick Leave, Vacation and Accrued Holiday Time**

Sick leave, vacation, or accrued holiday time may be used during Family/Medical Leave for illness. Vacation or holiday time may be used during the bonding portion of Family/Medical Leave or for the placement of a newly adopted or foster care child.

A minimum of at least 40% of the employee's regularly scheduled work time must be used in benefit hours to remain in a leave with pay status. If an employee is receiving Temporary Disability Income (TDI) or Workers' Compensation, they may use sufficient sick, vacation or holiday leave to equal but not exceed the salary they were earning when they became disabled.

If the employee elects not to use accrued benefit hours, they will be placed in a LWOP status. Vacation, sick leave and holiday accruals cease when an employee is in a LWOP status.

### **Medical, Dental and Life Insurance Premiums**

During Family/Medical Leave, the County will provide individual coverage for medical and dental insurance under the standard plan. The County will continue to pay its portion under the enhanced plan and the employee will pay their portion. Individual basic term life insurance premiums will also be paid by the County. The employee is responsible for dependent/spouse premiums under both plans.

Individual life insurance premiums will be paid by the County for employees in a LWOP status if they have at least five years of service in the North Carolina Local Governmental Employee Retirement System or if they are receiving Workers' Compensation benefits. Dependent/spouse premiums are the responsibility of the

employee.

If an employee does not return to work following Family/Medical Leave, the employee will be expected to reimburse the County for individual medical insurance premiums paid during the time the employee was in a leave without pay status. This does not apply if the employee is medically unable to return to work.

Revised: January 1, 2004	
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### **Job Protection Rights**

When the employee is able to return to work, the County will return the employee to the same or equivalent position with the same salary, benefits and responsibilities. In rare circumstances where operational needs require replacement of that position, such replacement will be done only with the approval of the department director and the Human Resources Director.

### **Aggregate Date, County Service Date, and Annual Review Date**

Employees returning from a LWOP status will have their aggregate date, County service date, and annual review date adjusted equal to the amount of time they were actually off the payroll.

### **EXTENDED MEDICAL LEAVE**

Extended Medical Leave is LWOP unless accrued or donated benefits are used. This leave may be used in the event of an eligible employee's serious health condition, birth of a child, and/or caring for the employee's child, spouse, or parent who has a serious health condition. With proper documentation employees may continue in Extended Medical Leave up to but never more than a combined leave total of 52 consecutive weeks, including up to 12 weeks of Family Medical Leave with and/or without pay.

A regular employee is eligible for Extended Medical Leave if:

1. The employee has completed the first 90 calendar days of employment but does not have sufficient service time to be eligible for Family-Medical Leave or
2. The employee is unable to return to work after 12 weeks on Family Medical Leave due to their own or their child's, spouse's or parent's serious health condition.

If an employee is still in the first 90 calendar days of employment, the department director may request approval from the Human Resources Director to place the employee in Extended Medical Leave.

The leave request forms should be submitted by the employee at least 30 days prior to beginning leave or, in more urgent situations, as soon as possible. The dates of the entire leave must be supported by updated medical documentation as necessary.

After the Extended Medical Leave document has been signed by the employee and the physician, the forms and/or documentation must be submitted to the Human Resources Department to be put in the employee's medical file. A PAR is also required as soon as possible to place the employee in Extended Medical Leave.

The first day of leave is the date designated on the medical documentation or the day following the last day worked.

If employees have over five years of service in the NCLGERS or are receiving workers' compensation benefits, the County will continue to pay for individual medical and dental insurance. If an employee has less than five years of service, he/she is responsible for individual medical and dental insurance premiums while on Extended Medical Leave, if they are in a LWOP status.

Sick leave, vacation and holiday accruals are held intact with no additional accrual when an employee is in a LWOP status. Employees returning from a LWOP status will have their aggregate date, County service date, and annual review date adjusted equal to the amount of time they were actually off the payroll. Employees using benefit time will continue to receive normal leave accrual and their service dates and annual review date will not be adjusted.

When the employee returns to work from an illness, he/she must present a physician's statement that they are able to return to work. Any restrictions placed on the employee must be included in the statement. If the County is able to reasonably accommodate the employee's restrictions, the employee may return to work in their original position.

If the County is unable to accommodate the employee's restrictions, they will not be able to return to work in their original position.

If an employee returns to work for 30 days or more before going out again for the same condition, the time out will be counted as separate incidents and the 52 consecutive weeks will begin again. If the employee returns to work for less than 30 days, the time out will be counted as the same incident and the 52 week count will resume. A return to work status of 30 days or less will not entitle the employee to a new 52 week LWOP authorization.

## **REPLACEMENT AND RETURN FROM EXTENDED MEDICAL LEAVE**

When an employee is placed in Extended Medical Leave, the employee's position may be filled if approved by the Human Resources Director. If the employee's position has been filled when the employee is released to return to work, the employee will be reinstated to an equivalent position, if available, within the department provided that the employee meets the minimum qualifications of the position and returns to work within 52 consecutive weeks of combined leave.

Prior to requesting approval to fill an employee's position, the department must consider all other alternatives including reassignment of duties within the department, employing staff from a temporary agency, creating a temporary position, and/or temporarily

promoting a qualified employee. Approval will be granted only when leaving the position vacant will cause an undue hardship on the department and when other staffing alternatives are not feasible.

If appropriate documentation is received from the department to justify filling the position, the Human Resources Department will contact the employee regarding the status of their availability for work. If the employee is able to return to work within a reasonable length of time, the position will not be filled. If the employee is unable to return prior to their position being filled, they will be entitled to an offer of a position with the same classification or an equivalent position for which they meet the minimum qualifications within the department. If no position is available at the equivalent classification of the employee's original position, the department must offer the employee a position in a lower classification for which the employee qualifies, if available. Salary may not exceed the maximum for the position. An offer of a position at a lower classification may be declined by the employee without forfeiting the one-time entitlement for reinstatement to an equivalent position.

If the employee is able to return to work within the 52 week limit and their position has been filled, they will be entitled to an offer of a position with the same classification or an equivalent position for which they meet minimum qualifications within the department. The employee will return to this position at the same pay unless there has been a market adjustment. If no position is available at the level of the employee's original position, the department must offer the employee a position in a lower classification for which the employee qualifies, if available. Salary may not exceed the maximum for the position. An offer of a position at a lower classification may be declined by the employee without forfeiting the one time entitlement for reinstatement to an equivalent position.

If no position is available in the employee's department, they may pursue employment in another department by contacting the Recruitment Division in the Human Resources Department. The employee will be guaranteed an interview for any position at the same or lower classification for which they meet minimum qualifications.

If the employee returns to a position in a lower classification in another department they will be entitled to a one time offer of a position equivalent to the employee's former position in their original department for which they meet minimum qualifications. No time limit applies to this entitlement if the employee returns to work within the 52-week limit.

If an employee does not return to work within 52 consecutive weeks of Extended Medical Leave, they may be terminated. If terminated, the employee will be paid for any accrued benefits.

## **EXTENDED FAMILY LEAVE**

The County will grant eligible employees Extended Family Leave for the purposes of bonding following the birth of a child, legal adoption, or placement of a foster child, for a period up to six months including time the employee was in a Family-Medical Leave

and/or Extended Medical Leave status. An additional six months but not over a combined leave total of 52 consecutive weeks may be granted if approved by the employee's department director. An employee on Extended Family Leave is placed in a LWOP status unless accrued vacation is used.

A regular employee is eligible for Extended Family Leave if:

1. The employee has completed the first 90 calendar days of employment but does not have sufficient service time to be eligible for Family-Medical Leave or
2. The employee began a leave of absence in Family-Medical Leave or Extended Medical Leave for the birth, adoption, or placement of a foster child and elects to continue on leave past the initial 12 weeks to bond with a new child.

If an employee is still in the first 90 calendar days of employment, the department director may request approval by the Human Resources Department to place the employee in Extended Family Leave.

Human Resources Department forms and required documentation must be submitted to the department director to place the employee in Extended Family Leave. Documentation must certify the birth or placement of a child. The request should be received by the department director at least 30 days prior to the beginning of the extended leave.

The form and/or documentation and a PAR to place the employee on Extended Family Leave must be submitted to the Human Resources Department to be put in the employee's permanent personnel file.

An employee on Extended Family Leave is responsible for all individual and dependent medical and dental premiums.

Sick leave and vacation are held intact with no additional accrual when an employee is in a LWOP status. Employees returning from LWOP will have their aggregate date, County service date, and annual review date adjusted equal to the amount of time they were actually off the payroll. Employees using vacation time will continue normal leave accrual and will not have their service dates or annual review date adjusted.

## **REPLACEMENT AND RETURN FROM EXTENDED FAMILY LEAVE**

When an employee is placed in Extended Family Leave the employee's position may be filled if approved by the Human Resources Director. If the employee's position has been filled when he/she is ready to return to work, the employee will be reinstated to an equivalent position, if available, within the department provided that the employee meets the minimum qualifications of the position and returns to work within 52 consecutive weeks of combined leave.

Prior to requesting approval to fill an employee's position, the department must consider all other alternatives including reassignment of duties within the department, employing

staff from a temporary agency, creating a temporary position, and/or temporarily promoting a qualified employee. Approval will be granted only when leaving the position vacant will cause an undue hardship on the department and when other staffing alternatives are not feasible.

If appropriate documentation is received from the department, the Human Resources Department will contact the employee regarding the status of their availability for work. If the employee is able to return to work within a reasonable length of time, the position will not be filled. If the employee is unable to return prior to their position being filled, they will be entitled to an offer of a position with the same classification or an equivalent position for which they meet the minimum qualifications within the department. If no position is available at the equivalent classification of the employee's original position, the department must offer the employee a position in a lower classification for which the employee qualifies, if available. Salary may not exceed the maximum for the position. An offer of a position at a lower classification may be declined by the employee without forfeiting the one-time entitlement for reinstatement to an equivalent position.

If the employee returns to a position in a lower classification in another department, they will be entitled to a one-time offer of a position equivalent to their former position in their original department, provided they meet the minimum qualifications. No time limit applies to this entitlement if the employee returns to work within the 52 week limit.

If no position is available in the employee's department, they may pursue employment in another department by contacting the Recruitment Division in the Human Resources Department. The employee will be guaranteed an interview for any position at the same or lower classification for which they meet minimum qualifications.

If the employee returns to a position in a lower classification in another department they will be entitled to a one time offer of a position equivalent to the employee's former position in their original department for which they meet minimum qualifications. No time limit applies to this entitlement if the employee returns to work within the 52-week limit.

If an employee does not return to work within the 52 consecutive weeks of Extended Medical Leave, they may be terminated. If terminated, the employee will be paid for any accrued benefits.

### **TEMPORARY DISABILITY INCOME (TDI)**

TDI will be paid to employees after 25 calendar days if an employee is medically disabled because of a non-work related illness or accident, is under the care of a licensed physician, and unable to work. To be eligible, an employee must have completed the first 90 days of employment and provide medical documentation from the physician to cover the entire absence from work. Sixty percent of the employee's weekly earnings will be paid for up to 26 weeks.

A disabled employee must use a minimum of 40% of accrued sick, vacation, or holiday leave during the 25 calendar day waiting period to remain in a pay status. TDI will begin on the 26th calendar day and employees may use the minimum of 40% of accumulated sick, vacation, or holiday leave to supplement the insurance payment. Employees who

# THE UNIVERSITY OF NORTH CAROLINA AT WILMINGTON

## FACULTY DISABILITY & FAMILY MEDICAL LEAVE SALARY CONTINUATION POLICY

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Responsible Offices: Office of the Provost  
Human Resources

Effective: July 1, 2004  
Supercedes: August 21, 2001

Forms: FMLA Application

Related Links: FMLA Policy  
Family Illness Policy

### **A. Objectives**

To provide for a period of paid leave for faculty members for serious personal disability or eligible family leave purposes under the Family Medical Leave Act of 1993 (FMLA). (See Administrative Procedure HR 2.25)

To ensure equal treatment among faculty who need paid time off related to personal disability, parental leave, or family member illness and to ensure the consistent administration of faculty leaves of absence.

### **B. General Statement**

Under FMLA eligible employees are entitled to a total of 12 workweeks leave, paid or unpaid, during any 12-month period for serious personal disability or eligible family medical leave purposes.

### **C. Definitions**

1. A **serious personal disability** is a health condition that requires either inpatient care or continuing treatment by a health care provider and includes both acute and chronic conditions.
2. **Family members** for purposes of this policy include a spouse or unmarried partner, children, or parents. This policy also covers other dependents living in the employee's household.
  - a. A spouse includes husband or wife or unmarried partner.

Unmarried partners are any two individuals who have a committed relationship with one another and consider themselves life partners;

who maintain a common household and share responsibility for the common necessities of daily living; who have both attained the age of consent and are not so closely related to one another as would preclude marriage in NC; and who are both unmarried and have no other partner. [Adopted by the UNCW Benefits Committee, October 20, 2002.]

b. A child is a son or daughter and may be a biological child, an adopted child, a foster child, a stepchild, the employee's legal ward, or a child of an employee standing in loco parentis.

c. A parent is a biological or adoptive parent or an individual who stood in loco parentis to the employee when the employee was a child.

3. **Eligible family leave purposes** include the following:

a. Birth of a child and care for the child after birth, provided the leave is completed within 12 months of the birth

b. Care for a child placed with the employee for adoption or foster care, provided the leave is completed within 12 months following adoption

c. Care for the employee's spouse, child, parent where that spouse, child, parent has a serious health condition

d. Care for other dependents living in the employee's household where that dependent has a serious health condition

**D.** Coordination with FMLA and the NC Family Illness Leave Policy

All periods of paid time off under this policy will be construed as family medical leave under the Family & Medical Leave Act. The FMLA entitlement of 12 weeks of leave without pay will run concurrently with any period of paid time off.

The North Carolina Family Illness Act allows for an extension of up to 52 weeks of leave without pay during a five-year period in cases of serious illness of a spouse, child, or parent. Under NC Family Illness Leave an eligible employee is a permanent or time-limited employee (1) who has worked for the State of North Carolina for a minimum of 12 months and (2) has been in a paid status at least 1040 hours during the previous 12-month period (or the equivalent of 50% of full-time equivalent load for faculty). Temporary employees are not eligible for Family Illness Leave.

## **E. Coordination with Disability Plans**

To the extent applicable, salary continuation is paid during the NC-DIP waiting period and does not extend or defer the period for which employees are eligible for short-term disability benefits. Faculty not enrolled in a supplemental program will be at a decided financial disadvantage in the case of serious illness. .

### **1. NC Disability Income Plan Benefits**

All faculty participating in retirement and who have at least one full year of service are covered under the North Carolina Disability Income Plan (NC-DIP) for short-term disability benefits which provide up to one year of disability income at 50% of base salary following a 60-day waiting period. Further, faculty with five years of service are covered under NC-DIP for long-term disability benefits which provide disability income at 65% of salary after the short-term disability period has been exhausted.

### **2. Supplemental Disability Programs**

All faculty participating in retirement are eligible to participate in a supplemental disability income program at their own expense, which provides 66.67% of base salary (after coordination with NC-DIP benefits, if any, and social security benefits) following a 90-day waiting period. Employees who do not enroll in the supplemental disability plan within 30 days of eligibility are required to provide medical evidence of insurability in order to participate.

## **F. UNCW Salary Continuation for Faculty**

### **1. Exclusive Nature of Policy**

Upon its date of implementation, this policy becomes the university's sole faculty disability policy and should be applied in all cases of disability. Informal voluntary agreements whereby faculty teach courses and perform other normally assigned professional duties for disabled colleagues are no longer sanctioned, except in the initial two weeks of a disability as noted below.

### **2. Eligibility**

#### **a. Participation in Retirement Plan**

To be eligible for salary continuation, a faculty member must be participating in the Teachers' & State Employees' Retirement System, the UNC Optional Retirement Program, the UNCW Phased Retirement Program or be employed under a three-year half-time reappointment contract.

b. Eligible Appointments Covered Under This Salary Continuation Policy

Tenured and tenure-track faculty, regardless of length of service, full-time lecturers with more than one year of service, and visiting faculty with more than one year of service are covered under this salary continuation policy. Faculty disabled for a period greater than 60 days will be transferred from the university payroll to be compensated through NC-DIP if eligible.

Disability or family leave salary continuation is not available to full-time lecturers with less than one year of service, to visiting faculty with less than one year of service, or to adjunct, temporary, or other faculty in non-benefit earning appointments.

3. Salary Continuation Benefit

UNCW will provide salary continuation at 100% of base salary as follows:

a. Up to 60 days from the onset of the faculty member's personal disability. Faculty disabled for a period greater than 60 days will be transferred from the university payroll to be compensated through NC-DIP if eligible.

b. Up to 60 days for eligible family leave purposes as outlined in C. 3. above.

Salary continuation payments are equivalent to the faculty member's 12-month disbursement schedule and are not calculated based on the number of academic work days lost.-

**Eligible employees are entitled to a total of 12 weeks leave during any 12-month period.**

<b>Appointment Type</b>	<b>Leave Purpose</b>	<b>Salary Continuation</b>
Tenured and tenure-track faculty regardless of length of service (including tenured faculty with 12-month appointments)	<ul style="list-style-type: none"> <li>● Employee's serious disability</li> <li>● Birth or adoption of child</li> <li>● Family member illness</li> </ul>	<ul style="list-style-type: none"> <li>● 60 days</li> <li>● 60 days</li> <li>● 60 days</li> </ul>
Full-time lecturers with more than one year of service	<ul style="list-style-type: none"> <li>● Employee's serious disability</li> <li>● Birth or adoption of child</li> <li>● Family member illness</li> </ul>	<ul style="list-style-type: none"> <li>● 60 days</li> <li>● 60 days</li> <li>● 60 days</li> </ul>
Full-time visiting faculty with more than one year of service	<ul style="list-style-type: none"> <li>● Employee's serious disability</li> <li>● Birth of adoption of child</li> <li>● Family member illness</li> </ul>	<ul style="list-style-type: none"> <li>● 60 days</li> <li>● 60 days</li> <li>● 60 days</li> </ul>

#### 4. Successive Disabilities

Salary continuation may be afforded more than once during an individual's employment with the university, but only once for a given disability period for the same medical condition (as determined by Human Resources under NC-DIP guidelines).

## **G. Coordination with Other Leave Programs**

### **1. No Impact on Other Leave Options**

This policy shall not be construed as reducing or eliminating any leave with pay, off campus scholarly assignment, research reassignment, or leave without pay option presently available to faculty and administrators for other than disability purposes.

### **2. No Change to Incidental Sick Time Off Policy**

This policy does not change the practice of colleagues covering classes during periods of incidental sick time off of less than two weeks. Salary continuation covers only those absences in excess of two weeks, but will be charged from the beginning of an extended absence.

### **3. Coordination with Sick Leave**

Faculty members who hold EPA 12-month administrative positions at the time of their disability must first exhaust any accrued sick, vacation, or bonus leave and then will be eligible for any remaining period of salary continuation applicable to their faculty status (if greater).

Faculty who have accrued *sick*, vacation, or bonus leave from a previous EPA 12-month administrative appointment must first exhaust any accrued sick, vacation, or bonus leave and then will be eligible for any remaining period of salary continuation.

If sick leave is used, it will run concurrently with and not in addition to disability salary continuation.

### **4. No Formal Leave Accrual**

Disability salary continuation under this policy does not constitute "sick leave" as this term is used in State and university policy. Allowances for salary continuation have no cash equivalency; are not transferable through the university's shared leave program for EPA 12-month & SPA employees; may not be credited to retirement under the Teachers' and State Employees' Retirement System; and are not relevant under the Optional Retirement Program.

## **H. Processing Guidelines**

1. *Mandatory Notification to Dean & Human Resources*

Department chairs must notify their respective dean and Human Resources in any circumstance in which a faculty member is absent due to personal disability or family leave in excess of two consecutive weeks.

2. *Application, Approvals, & Funding*

Faculty members must apply for salary continuation on such forms as may be adopted by Human Resources. Upon certifying eligibility, Human Resources will notify the appropriate department chair and dean that the faculty member qualifies for disability or family leave salary continuation under this policy.

Department chairs and deans remain responsible for approving all faculty leaves of absence, including disability-related leaves of absence. The department chair is responsible for securing, to the extent possible, substitute personnel for the duration of the faculty member's leave. Any adjustments in work schedules within the department are at the discretion of the department chair with the approval of the dean and are subject to departmental and institutional needs and resources.

Disability salary continuation will automatically be charged to the employee's home department. However, upon certification of a faculty member's disability, the dean will immediately provide funding to the faculty member's department for a temporary or interim replacement. This funding will continue for the duration of the faculty member's disability or family leave.

3. *Verification of Disability / Medical Confidentiality*

The university (through Human Resources) may require the faculty member to provide medical verification of the nature and expected duration of any disability from the employee's or family member's physician or a physician specializing in the area of the diagnosis. The university may request a second or third opinion at its own expense.

Human Resources certifies to the academic chain of command whether the condition constitutes a disability or eligible family leave but does not provide personal medical information to the employee's immediate supervisor without the employee's permission.

4. *Record Keeping*

Human Resources will maintain records of disability and family leave salary continuation in the employee's official personnel file. On the effective date of this policy, all prior service at UNC Wilmington for non-tenure track faculty will contribute to eligibility.

**I. Appeals**

A decision by the dean not to grant a request for leave under this policy may be appealed to the Provost.

**J. Effect on Tenure**

An untenured, tenure-track faculty member who is granted leave under this policy is eligible for an extension of the time period for the permanent tenure decision if the faculty member so chooses. He or she should apply for that extension through the department head and dean to the provost at the time the paid leave is granted. This extension shall be for the time required as governed by the nature of the situation.

A tenured faculty member granted leave under this policy may have his or her five-year post-tenure review delayed by a period agreed upon by the faculty member, the department head, and the dean.

Faculty will not be penalized in their condition of employment because they require time away from work caused by or contributed to by conditions covered by this policy.

Effective Date

This policy shall become effective upon approval by the Chancellor.

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Rosemary DePaolo  
Chancellor

*Original Policy Adopted: November 13, 1998*  
*Revised to include Phased Retirees: August 21, 2001*  
*Revised to include Family Medical Leave: July 1, 2004*