STATE OF NORTH CAROLINA
FAMILY MEDICAL LEAVE POLICY
FREQUENTLY ASKED QUESTIONS

1. **What documentation is required to establish someone's eligibility for FML based on "in loca parentis" status.**

   Since a biological or legal relationship is not necessary to qualify for "in loca parentis" status, it is not always possible for an agency to request documentation such as a birth certificate or legal document to verify this relationship. The federal code [825.113(d)] indicates that reasonable documentation may take the form of a simple statement of the relationship from the employee.

   Agencies/universities will need to review these situations on a case by case basis. While no single action determines the " in loca parentis" status, a series of actions can demonstrate a parental like relationship. The following indicators can be used to identify this type of relationship:

   a) Does the person have power of attorney to make medical decisions about the child when the parent is not present?
   b) Does the person have the consent of a parent or legal guardian to provide day-to-day care for the child?
   c) Does the person have the responsibility of attending school functions and meeting with school officials to discuss educational issues?
   d) Does the person financially support the child?

2. **Why does the State policy not reference the "key employee" exemption for reinstatement?**

   In order to deny restoration to a "key employee", an employer must determine that the restoration of the employee to employment will cause "substantial and grievous economic injury to the operations of the employer, not whether the absence of the employee will cause such substantial and grievous injury (825.218). Since the federal government considers the State of North Carolina as one single employer, it would be difficult to justify that the State of North Carolina would not be financially able to handle the 12 week absence of a single employee because we could not temporarily fill the job or could not maintain an equivalent position for reinstatement.

3. **Since temporary employees are not eligible for health insurance coverage, why does the State include them as eligible employees for Family Medical Leave?**

   The federal regulations do not distinguish appointment type for eligible employees, which is interpreted to mean that as long as any employee meets the eligibility requirements, they should be entitled to Family Medical Leave. In State government, this means job protection only, since temporary employees are not eligible for health benefits.

4. If an employee fails to pay his/her share of the health insurance premium while on FML-LWOP, can I cancel their health insurance coverage?

If an employee's premium payment is more than 30 days late, obligation to maintain health insurance coverage stops. The employer must provide 15 days notice to the employee that the coverage will cease.

5. If an employee returns to work from FML-LWOP and works for one week and then decides to resign, can the employer recover the insurance premium paid during the period of FML-LWOP?

Yes. The federal government defines a return to work as 30 calendar days. Therefore, if the employee resigns any time within 30 days after the return to work, then the insurance premiums may be recovered by the employer. Exception: If reason for resignation is illness or some other reason beyond the employee's control, you cannot recoup premiums.

6. Can an employee use paid leave to meet the 12 months of state service eligibility requirement?

Yes. The 12 month eligibility requirement is based on pay status and not actual hours worked. If the employer approves the employee to use paid leave, then the paid leave can be used to meet the eligibility requirements. The employer must advise the employee when eligibility requirements will be met.

7. Can an employer deny eligibility for FML to an employee who was recently reinstated from a two-year period of military leave?

No. Periods of military leave should be credited toward the 12 months of state employment and the 1040 hours of work when determining eligibility.

8. Is an employee who is out sick intermittently due to morning sickness required to have a doctor's note for each absence?

No. Any incapacity due to pregnancy is covered under FML. The employee only needs to provide one doctor's note certifying that she is under doctor's care due to pregnancy.

9. If our agency has a policy that requires all leave requests to be submitted in writing, can we deny an employee's request for FML if they verbally notify the agency of their need for leave?

No. The federal policy specifically allows for verbal requests for FML; therefore, an employer's policy cannot be more restrictive than the federal policy.

10. Can our agency require medical certification from an employee who has requested FML after childbirth to care for a newborn?

Medical certification can only be required if the employee is requesting to use paid sick leave. Otherwise, review of a birth certificate will be considered sufficient documentation to establish eligibility for FML.

11. If an employee requests FML for childbirth and to care for a newborn, can our agency limit the number of weeks approved for FML to 6 weeks for a normal delivery and 8 weeks for a cesarean delivery?

No. An eligible employee requesting leave for childbirth and to care for a newborn is entitled to 12 weeks of FML.

12. If the medical certification form is incomplete or the information provided not clearly stated, can a supervisor contact the employee's physician directly and request/clarify information?

No. If additional information/clarification is needed, the information should be obtained from the employee or their spokesperson. The employee/spokesperson should be given at least 7 calendar days to correct any incomplete information. The employee may give an employer representative written permission to contact the health care provider for clarification of information. The representative can be a HR Professional, leave administrator or management representative but not the direct supervisor.

13. Why does an employee have the option to use sick leave for adoption but cannot use sick leave for foster care?

The 30 days of sick leave is allowed for adoption within 12 months of the possession of the child for the purpose of bonding with the child similar to what is allowed for bonding period for the birth of a child. Sick leave begins at the time of physical possession of the child & have either adopted or are in the process of adopting the child.

Foster care is seen as a temporary (short-term) alternative plan of care while the state authority determines the best permanent plan for the child (reunification with the biological parent, conversion to a legally-permanent guardianship or adoption). Since the purpose for the placement in foster care is not to foster a permanent bond with the child but to provide temporary care for the child, it does not meet the same rationale and intent as sick leave used for adoption. It's not unusual for foster parents to have ongoing multiple placements of children in their home over a period of time, so it would be difficult to administer sick leave provisions for each and every placement. Considering these facts, sick leave cannot be used for foster care.