

## **Policies and Regulations**

### **NEPN Code: GCCAC-R/STI**

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#### **Personnel**

#### **Family and Medical Leave**

##### **Eligibility**

Southeast Technical College employees are eligible for up to 12 weeks of unpaid leave in accordance with the Family and Medical Leave Act of 1993 (FMLA) if they have at least 12 months of service, and have worked at least 1,250 hours within the preceding 12-month period. The preceding 12-month period shall be calculated backwards on a rolling basis from each day of FMLA leave taken by the employee.

##### **Qualifying Events**

An eligible employee may take FMLA leave under the following conditions:

1. For incapacity due to pregnancy, prenatal medical care or the birth of a child;
2. To care for the employee's child after birth or placement of a child with the employee for adoption or foster care if taken within the first 12 months following the birth or placement;
3. To care for the employee's spouse, child or parent with a serious health condition;
4. For a serious health condition of the employee which renders the employee unable to perform the employee's job;
5. If the employee experiences a qualifying exigency that arises from a spouse, parent, or child that has been called to or on covered active military duty or during any active duty;
6. To care for an armed forces member or qualified veteran who is a spouse, parent, child, or next of kin of the employee who is injured while on covered active duty or for an injury that manifests itself after active duty. The employee may be eligible for up to 26 weeks of FMLA leave during a single 12-month period for this event, including any FMLA leave taken for reasons listed above.

##### **Serious Health Conditions**

A serious health condition is an illness, injury, impairment or physical or mental condition that involves

1. an overnight stay in a hospital, hospice or residential medical care facility, or a period of incapacity requiring absence from work, school, or other regular daily activity for more than three consecutive full calendar days and continuing treatment by a health care provider;
2. pregnancy or prenatal care;

3. chronic conditions which require periodic visits for treatment by a health care provider (at least twice per year) and continues over an extended period of time and may cause episodic rather than continuing incapacity;
4. a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective which is under the continuing supervision of a health care provider (e.g. stroke, Alzheimer's, terminal stage of a disease); or
5. any periods of absence to receive multiple treatments by a health care provider for restorative surgery or for a condition that would likely result in a period of incapacity of more than three full calendar days in the absence of medical treatment (e.g. chemotherapy, physical therapy, radiation).

### **Medical and Other Certifications**

Medical certification for leave requested due to a serious health condition or for military caregiver leave is required. The medical certification must contain the following information:

- Date the serious health condition began
- Probable duration of the condition
- Appropriate medical facts regarding the condition
- If the leave is based on care of a family member, a statement that the employee is needed to provide the care and an estimate of the amount of time the need will continue
- If the leave is based upon the employee's own serious health condition, a statement that the employee is unable to perform the functions of his/her job
- In the case of intermittent leave or a reduced schedule for planned medical treatment, the dates the treatment is expected and the duration of the treatment.

Southeast Tech, at its expense, may require a medical examination by a health care provider of its own choosing if it has a reasonable question regarding the medical certification provided by the employee. In lieu of a second opinion, Southeast Tech may contact the health care provider directly to clarify or authenticate a medical certification, including certifications for military caregiver leave. Second opinions may not be required for military caregiver leave.

Separate certification may also be required regarding the nature of the family member's military service and/or the existence of a qualifying exigency.

### **Fitness for Duty Certifications**

An employee returning from FMLA leave for his/her own serious health condition will be required to provide a Fitness for Duty (FFD) certification signed by the health care provider prior to returning to work. An employee who fails to provide an FFD certification may be prohibited from returning to work until it is provided. An employee who fails to provide an FFD certification may be disciplined in accordance with the Southeast Tech Employee Handbook.

FFD certifications may be required when an employee returns from intermittent FMLA leave if concerns exist regarding the employee's ability to resume his/her duties safely.

**Spouses Employed by Southeast Tech/Sioux Falls School District**

Spouses who are both employed by Southeast Tech/the Sioux Falls School District eligible for FMLA leave will be limited to a combined total of 12 weeks of leave during any 12 month period if leave is taken for the birth, adoption or placement of a child for foster care or to care for the employee's parents with a serious health condition. Spouses are each entitled to 12 weeks of leave if needed to care for their newborn child with a serious health condition provided they have not exhausted their entitlements during the applicable 12 month period. Intermittent leave following the birth of a healthy newborn is available only if approved by the President and if so, Southeast Tech may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than the employee's regular position.

**Concurrent Leave**

For serious health conditions of spouse, child or parent, Family Illness Leave (if available) must be used. Once all available paid leave has been exhausted, the remainder of the 12 weeks (or 26 weeks for military caregiver) of leave will be unpaid.

For a serious health condition of the employee, Sick Leave and the 30 days available through Personal Sick Leave Assistance (if available to and requested by the employee) and vacation (if available) must be used. Once all available paid leave and unpaid leave requested in conjunction with Personal Sick Leave Assistance has been exhausted, the remainder of the 12 weeks of leave will be unpaid.

Absences covered under worker's compensation run concurrently with the employee's FMLA entitlement. Use of accumulated paid leave while receiving worker's compensation benefits will be paid in accordance with the FMLA policy for the serious health condition of the employee.

**Intermittent Leave/Reduced Leave**

When medically necessary as verified by the health care provider, employees may take FMLA leave intermittently or on a reduced schedule basis for their own serious health condition, the serious health condition of an immediate family member, or for military caregiver leave. Employees are required to cooperate with Southeast Tech to arrange reduced work schedules or intermittent leave so as to minimize disruption of the school day or business operations. If an intermittent leave or a leave on a reduced schedule is requested for foreseeable leave based on planned medical treatment, Southeast Tech may require the employee to transfer temporarily to an available alternate position for which the employee is qualified, as long as the alternative position has equal pay and benefits.

### **Military Leave**

Qualifying exigency includes short-term notice deployments, military events and related activities, urgent childcare, financial and legal arrangements, post-deployment activities, and other situations arising out of the active duty or call to active duty status provided the employee and Southeast Tech agree. Qualifying exigency leave is available during covered active duty which is defined as when the spouse, parent or child is deployed to a foreign country with the Armed Forces.

Military Caregiver Leave for a serious injury or illness is available to care for a spouse, parent, child or next of kin who is a member of the armed forces or a veteran so long as the veteran was a member of the armed forces, including the National Guard and Reserves, at any time in the five (5) years prior to the date medical treatment, recuperation or therapy begins. A serious injury or illness includes pre-existing injuries or illnesses that were aggravated in the line of duty. The serious injury or illness may manifest itself before or after the service member becomes a veteran.

### **Required Notification to Employer**

When the need for leave is foreseeable due to expected birth or placement of a child, the employee must provide 30 days notice or if 30 days notice is not practicable, notice must be given as soon as practicable (as soon as both possible and practicable in light of the facts and circumstances).

When the need for leave is foreseeable due to the employee's serious health condition, the serious health condition of a spouse, child or parent or for military caregiver leave, the employee must give 30 days notice or if 30 days notice is not practicable, notice must be given as soon as practicable (as soon as both possible and practicable in light of the facts and circumstances).

When the need for leave is unforeseeable, notice as soon as practicable in light of the facts and circumstances is required. Notice for all FMLA related absences shall be given by the employee in accordance with Southeast Tech's absence leave provisions of the Southeast Tech Employee Handbook.

Employees may be required to report periodically on their leave status and intent to return to work to Human Resources.

Human Resources will inform employees requesting FMLA leave whether or not the employee is eligible. If the employee is not eligible, Human Resources shall indicate the reason for the ineligibility. If eligible, Human Resources will notify the employee and seek any additional information required and advise the employee of the employee's rights and responsibilities. Human Resources will notify the employee that the leave will be designated as FMLA leave and count against the employee's FMLA leave entitlement. If it is determined that the leave is not FMLA protected, Human Resources will notify the employee.

### **Health Care Coverage**

Southeast Tech payment of benefits will be for the duration of FMLA leave at the same level and under the same conditions coverage would have been provided if no leave was taken. The employee's share of the premium must continue to be paid by the employee while on leave.

#### **Payment method**

The employee share for the following month is due the last working day of the previous month. Payment is to be submitted to Finance Office.

#### **Termination of coverage**

Coverage may be terminated for an employee who fails to make the required payment within thirty (30) days of the due date.

#### **Reinstatement**

Upon return to work, health insurance coverage will be reinstated without requiring the employee to meet any health insurance eligibility requirements.

### **Return to work**

Any eligible employee who takes leave is entitled to be restored to his/her position or to an equivalent position with equivalent pay, benefits and other terms and conditions of employment in accordance with Board policies and the provisions of the Southeast Tech Employee Handbook.

### **Special Provisions for Instructional Employees**

Instructional employees are those whose principal function is to teach and instruct students in class. The term applies to instructors. It does not apply to non-instructional employees.

Leave during days outside of the employee's assigned calendar is not counted against the employee's FMLA entitlement. An instructional employee who is on FMLA leave at the end of the employee's assigned calendar will be provided with any benefits over the vacation that the employee would normally receive if they had been working at the end of the school year.

If an instructional employee begins FMLA leave toward the end of a semester or academic year, Southeast Tech may require the employee to remain on leave until the end of the academic term in the following circumstances:

- (1) Instructional employees who begin FMLA leave of at least three (3) weeks duration more than five (5) weeks before the end of the semester or academic term and the employee would return to work during the three (3) week period before the end of the semester or academic term;
- (2) Instructional employees who begin FMLA leave of more than two (2) weeks duration less than five (5) weeks before the end of the academic term for any reason other than their own serious health condition and the employee would

return to work during the two (2) week period before the end of the semester or academic term;

- (3) Instructional employees who begin FMLA leave of more than five (5) working days less than three (3) weeks before the end of a semester or academic term for any reason other than the employee’s own serious health condition.

If Southeast Tech requires an instructional employee to stay out until the end of the term

- (1) The period when the employee was able to return to work and was required to stay out will not count against their FMLA entitlement;
- (2) Southeast Tech will maintain the employee’s group health insurance and restore the employee to the same or equivalent job in accordance with the respective working agreement, including other benefits at the conclusion of the leave.

Instructional employees who take FMLA leave intermittently or on a reduced schedule for foreseeable leave based on planned medical treatment due to their own or covered relative’s serious health condition or to care for a covered service member and the instructional employee would be on leave for more than 20 percent of the working days over the period the leave would extend, Southeast Tech may require the employee either to take non intermittent leave for the period not to exceed the duration of the planned medical treatment or to transfer temporarily to an available alternative position that the employee is qualified to hold, that has equivalent benefits and pay, and that better accommodates intermittent leave than the employee’s regular position.

**Employee does not return**

If an employee fails to return to work at the conclusion of the FMLA leave, Southeast Tech may recover the premiums paid for coverage during the FMLA leave unless the failure to return to work was beyond the control of the employee.

Legal References:

- The Family and Medical Leave Act of 1993
- Public Law 103-3 Enacted February 5, 1993
- National Defense Authorization Act for Fiscal Year 2008; Section 585(c)
- National Defense Authorization Act for Fiscal Year 2010, Section 565

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