

## Family and Medical Leave Act (FMLA)

Policy Number:

Owner Department: Human Resources

Approved Date/Effective Date: September 24, 2014

### **I. POLICY STATEMENT/PURPOSE**

SCNM complies with the federal Family and Medical Leave Act of 1993, as amended, (FMLA) by allowing eligible employees job-protected time off from work for or due to:

- A. A serious health condition of the employee, the employee's spouse or domestic partner, child, parent, member of the employee's established household or a qualified military service member.
- B. The birth of and subsequent bonding with a biological child.
- C. Pre-adoption or pre-foster care matters.
- D. The placement and subsequent bonding with an adopted or foster child.
- E. A qualified exigency arising out of the fact that the employee's family member is a member of the military on or called to covered active duty.

### **II. POLICY STATUS**

New - replaces Family and Medical Leave: SCNM Employee Handbook

### **III. HISTORY/BACKGROUND**

- A. [Family and Medical Leave Act of 1993](#), as amended
- B. [The National Defense Authorization Act for 2010](#)

### **IV. DEFINITIONS**

#### *A. Child:*

1. A biological, adopted, foster, stepchild or legal ward who is under the age of 18 or over the age of 18 if incapable of self-care due to a mental or physical disability.
2. A biological, adopted, foster, stepchild or legal ward of the employee's domestic partner who is under the age of 18 or over the age of 18 if incapable of self-care due to a mental or physical disability.
3. A child for whom the employee stands *in loco parentis* (acting as a parent).

B. *Domestic Partner:* A person of the same or opposite sex who meets the eligibility criteria established by the Office of Human Resources.

C. *Intermittent Leave:* A leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time.

D. *Member of the Established Household:* A family member who resided in the employee's home prior to the leave and who is expected to continue to reside with the employee following the leave.

E. *Parent:* A biological, adoptive, step or foster father or mother, or any individual who stood *in loco parentis* to the employee.

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- F. *Qualifying Exigency.* Certain military events, such as arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions and attending post-deployment reintegration briefings.

### V. SCOPE/KEY STAKEHOLDERS

This Policy applies to an employee who:

- A. Has been employed by SCNM for a period of at least 12 months as of the first day of the leave.
  - 1. The months do not have to be consecutive.
  - 2. Employment prior to a break in service of seven (7) or more years will not be counted unless:
    - i. The break is due to services covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA).
    - ii. A written agreement exists concerning the employer's intention to rehire the employee after the break in service.
  - 3. An employee may be on non-FMLA at the time of meeting the 12-month eligibility requirement. Any portion of leave taken for an FMLA-qualifying reason after eligibility is met would be FMLA leave.
- B. Has worked at least 1,250 hours in the 12 months immediately prior to the first day of the leave.
  - 1. USERRA-covered service shall be counted as worked hours.

### VI. POLICY ITEMS

- A. FMLA allows an employee a period of leave up to either 12 or 26 workweeks, determined by the type of leave.
- B. SCNM has the right to designate an employee's time away from work as FMLA.
- C. FMLA and any paid time off benefit the employee has available must be taken concurrently.
  - 1. If the leave is for the employee's own personal medical reasons, the employee is required to use, at the onset of the leave, all remaining grandfathered SCNM short term disability hours, then all available sick hours and then all available vacation hours.
  - 2. If the employee takes leave to care for a family member, the employee is required to use, at the onset of the leave, all available sick leave and then all available vacation hours.
  - 3. If the leave is for a qualified exigency, the employee is required to use available vacation hours.
  - 4. After paid hours are exhausted, the leave will become unpaid for the remainder of the leave period.
- D. TYPES OF LEAVE
  - 1. Employee Care
    - i. Leave can be used for:
      - a. The employee's own serious health condition, including a serious illness, injury, impairment, physical or mental condition that renders the employee incapable of performing the essential functions of the job.
      - b. Incapacity due to pregnancy, prenatal medical care or child birth.
    - ii. An employee is entitled to a total of up to 12 workweeks of leave during a 12-month period.
    - iii. The 12-month period commences on the first day of leave if the leave is for the employee's own health condition or on the date of birth.

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### 2. Family Care

An employee is entitled to a total of up to 12 workweeks of leave during a 12-month period to care for a spouse or domestic partner, child, parent or member of the employee's established household for the following:

- i. Serious Health Condition
  - a. Incapacitates and prevents a family member from participating in daily activities for three or more consecutive calendar days.
  - b. The 12-month period commences on the first day of leave.
- ii. Birth, Adoption, Foster Care, Bonding
  - a. Birth. The 12-month period commences on date of birth.
  - b. Adoption or Foster Care. The 12-month period commences on the first day of the placement.
  - c. Bonding. Leave must be taken within 12 months of the birth or placement.
- iii. SCNM employees who are married to each other are entitled to a combined total leave period of 12 workweeks when requesting leave for the same event of:
  - a. A birth and subsequent bonding.
  - b. The placement and bonding with an adopted or foster child.
  - c. Caring for either employee's parent.

If the two married employees use only a portion of their individual 12 workweeks of leave for one of these purposes, each employee is then allowed the difference between the amount they took and their own full FMLA entitlement for another FMLA purpose.

### 3. Military Caregiver

- i. The employee may take leave for the serious health condition of a spouse or domestic partner, child, parent, next of kin, or member of the employee's established household who, as a member of the Armed Forces, National Guard or Reserves is undergoing medical treatment, recuperation, or therapy, is on out-patient status, or is on temporary disabled retired list duty for a serious illness or injury sustained while on covered active duty. The serious illness or injury may have occurred any time during the five years preceding the date of treatment.
- ii. An employee is entitled to a total of up to 26 workweeks of leave during a single 12-month period beginning on the first date FMLA leave is taken
- iii. While an employee who takes leave to care for a military family member is entitled to a total of 26 workweeks of leave during a single 12-month period, if the full 26 workweeks are not used for this purpose, only up to 12 of the remaining workweeks may be taken for other FMLA qualifying reasons.
- iv. SCNM employees who are married to each other are entitled to a combined total leave period of 26 workweeks when requesting leave for the same event.

### 4. Military Family Business/Qualified Exigency

An employee is entitled to a total of 12 workweeks of leave during a 12-month period, beginning on the first date FMLA leave is taken, to deal with a qualified exigency while a spouse or domestic partner, child, parent, or member of the employee's established household is on or is called to covered active duty status in the Armed Forces, National Guard or Reserves for military deployment to a foreign country.

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### E. SCHEDULING LEAVE

Leave may be taken on a continuous, intermittent, or reduced work schedule basis. Approval of intermittent leave or leave on a reduced work schedule is at the discretion of the Office of Human Resources and the employee's supervisor. An employee taking intermittent or a reduced schedule may be required to temporarily transfer to another job with equivalent pay and benefits that better accommodates that type of leave.

### F. REQUESTING LEAVE

1. The employee must submit a [Leave of Absence Request](#) Form to the Office of Human Resources 30 days in advance if the leave is foreseeable or as far in advance as possible if the leave is not foreseeable.
2. Employee Care  
A [Certification of Health Care Provider for Employee's Pregnancy or Serious Health Condition](#) must be completed by the health care provider of the employee verifying that the health condition requires the use of medical leave. Failure to provide medical certification may delay the commencement of the leave or may result in denial of the leave request
3. Family Care  
The employee must provide a [Certification of Health Care Provider for a Family Member's Serious Health Condition](#) completed by the health care provider of the spouse or domestic partner, child, parent or member of the established household. Failure to provide medical certification may delay the commencement of the leave or may result in denial of the leave request. Documentation confirming a family relationship, adoption or foster care may be required.
4. Military Caregiver  
The employee must provide a [Certification of Health Care Provider for a Military Family Member's Serious Health Condition](#) completed by the health care provider of the qualified military service member. Failure to provide medical certification may delay the commencement of the leave or may result in denial of the leave request.
5. Military Family Business/Qualified Exigency  
The employee must provide a [Certification for Military Family Business/Qualified Exigency](#). The request must be supported by active duty orders and, when requested, by a certification or a copy of the military member's Rest and Recuperation leave orders, or other documentation issued by the military setting forth the dates of the military member's leave.
6. The College, at its expense, may require the employee to obtain the opinion of a second or third health care provider selected by SCNM, provided the health care provider is not employed by SCNM.

### G. BENEFITS

1. SCNM will continue the employee's insurances for the duration of the paid/unpaid FMLA by paying the employer's share of any premium. The employee is responsible for his/her portion of premium.
  - i. While the leave is paid, the employee portion will be deducted from the employee's pay.
  - ii. While the leave is unpaid, SCNM will bill the employee. If payment is more than 30 days late, SCNM has the option of discontinuing coverage retroactively to the last day of the period for which a premium was paid.
  - iii. If the employee fails to return to work within 30 days of the end of the leave for reasons other than the continuation or recurrence of the serious health condition or other circumstances beyond the employee's control, SCNM has the option of recovering the employer share of the premium paid during the leave.

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### H. RETURN TO WORK

FMLA allows the majority of employees a period of leave up to either 12 or 26 workweeks after which the employee must be restored to the original or equivalent position with equivalent pay, benefits and other employment terms. Certain highly compensated employees (key employees) may have limited reinstatement rights.

1. If the employee is not able to return on the date originally indicated or desires to return to work on a different date, the employee must submit a letter to the Office of Human Resources at least two days prior to the originally anticipated return date.
2. A [Health Care Provider Release to Return to Work Form](#) will be required prior to the employee returning to work if the leave was taken due to employee's own serious health condition.
3. If unable to return to work after the FMLA due to reasons of his/her own health condition, or if the employee wishes to extend the leave for personal reasons, the employee may apply for an Extended Leave of Absence (paid/unpaid), which, in most cases, will not exceed an additional three months. Approval of an Extended Leave is at the discretion of the Office of Human Resources and the employee's Supervisor.

### VI. RESPONSIBILITY FOR IMPLEMENTATION

The Office of Human Resources will implement, administer and monitor this Policy.

### VII. RELATED POLICIES

- A. [Policies: Holidays Observed and Vacation](#)
- B. [SCNM Employee Handbook](#)
- C. [SCNM Faculty Handbook](#)

### VIII. RELATED DOCUMENTS

- A. [Leave of Absence Request Form](#)
- B. [Certification of Health Care Provider for Employee's Pregnancy or Serious Health Condition](#)
- C. [Certification of Health Care Provider for a Family Member's Serious Health Condition](#)
- D. [Certification of Health Care Provider for a Military Family Member's Serious Health Condition](#)
- E. [Certification for Military Family Business/Qualified Exigency](#)
- F. [Health Care Provider Release to Return to Work Form](#)

### IX. NEXT REVIEW DATE

As necessary

### X. VERSION CONTROL AND CHANGE HISTORY

Version Control	Approved By/Date	Date Effective	Amendment
1	President's Council/September 24, 2014	September 24, 2014	

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### **XI. POLICY AUTHOR/CONTACT**

Office of Human Resources/ Christine M. Cervantes, Chief Human Resources Officer