

## **SECTION: BENEFITS AND AMENITIES**

**POLICY NO: 1.3**

**SUBJECT: LEAVE OF ABSENCE (SPUH POLICY)**

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### **POLICY**

It is the policy of SPUH to offer eligible employees a leave of absence (LOA) provided all criteria are met, including those of any applicable federal and state laws. Please see the attached matrix (Form EB-4A) for a summary of each.

### **PROCEDURES**

1. The employee must initiate the request for LOA by contacting the benefits department at least one (1) month prior to the start of the leave or as required by applicable law. In cases where the employee is unable to submit the request (i.e. hospitalization), the Department Manager will contact HR Benefits as soon as they are notified and arrange to have the LOA paperwork sent to the employee.
2. If accrued vacation, holiday and sick hours are used to supplement pay while on leave, the individual will continue to accrue time while out. Once accrued hours are no longer being used to supplement pay, the employee will cease to accrue additional time while out on leave.
3. Employees are expected to pay their portion of any benefit premiums while on LOA. HR will provide the employee with a statement of any premiums owed by pay period. If group insurance benefits are not maintained during an LOA, they will be cancelled at the end of the month in which the last payment was received and the employee will be notified of their COBRA rights. The employee may re-enroll when they return to work effective with the first of the month following their return.
4. An employee on an approved LOA for medical reasons must present a release and “fit for duty” certification by their physician before a return to work is approved. This certification must be presented to Employee Health Services. Employee Health Services may require the individual to have an additional physical or psychological examination before certifying his/her return to work.
5. At the end of the Leave of Absence, if the individual is unable to return to work, that individual’s employment may be terminated with SPUH. If an individual would like to request a reasonable accommodation under the ADA that individual should submit a request to Human Resources (see ER-13). Should an individual be terminated, that individual would be eligible to apply for re-hire once fully recovered. However, there will be no guarantee that a position will be available at that time. If the individual’s break in service is one year or less, that individual’s service will be bridged (Policy E14).

6. An Employee Personnel Action Form (PE-18) must be completed by the Department Manager to return the employee to Active status.

## **TYPES OF LEAVES OF ABSENCE**

SPUH is a covered employer under both the Federal Family and Medical Leave Act of 1993 (FMLA) and the New Jersey Family Leave Act (NJFLA). Each of these statutes entitles eligible employees to take unpaid leave for specific qualifying reasons. SPUH employees may be eligible under one or both of these leave plans.

If an employee is eligible under both leave Acts, SPUH, to the extent permitted by law, will deduct the leave time taken from the employee's entitlement under each Act for which the reason for the leave is a qualifying reason. In some circumstances, NJFLA could provide greater or additional benefits than the FMLA or vice versa. If an employee is eligible under both leave Acts, SPUH will comply with the provision(s) of the Act that gives the employee the greater benefit. Neither Act may diminish the provisions of the other.

All employees of SPUH are covered by the New Jersey Temporary Disability Insurance. This program provides financial assistance during period of personal illness or injury (see Policy EB5). Employees should contact Human Resources to apply for this benefit.

### **A. The Family and Medical Leave Act of 1993**

SPUH is a covered employer under the Family and Medical Leave Act of 1993 ("FMLA"). The FMLA entitles eligible employees of a covered employer to a maximum of 12 weeks per year of unpaid leave for specific FMLA qualifying reasons, or 26 weeks in the event the leave is taken to care for a covered servicemember, as defined below.

Employees who have worked for SPUH for a total of twelve (12) months, and have worked for SPUH at least 1,250 hours during the twelve (12) months immediately preceding their leave date, and who work at a SPUH worksite that employs at least 50 employees within a 75-mile radius are eligible for FMLA leave. Eligible employees may take up to 12 weeks of unpaid leave in a 12-month period, or 26 weeks in a single 12-month period in the event the leave is taken to care for a covered servicemember, as defined below. The 12-month period is a rolling 12-month period, measured backwards from the date the employee's requested leave would commence.

Eligible employees may take FMLA leave for any of the following qualifying reasons:

1. the care of a child following the birth or adoption of a child, or the placement of a foster child;
2. the care of a parent, child or spouse with a "serious health condition"; or
3. the employee's own serious health condition which makes the employee unable to perform the essential function of his or her job; or
4. the care of a "covered servicemember," which is defined as a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, when the eligible employee is the spouse, son, daughter, parent, or next of kin (i.e. nearest blood relative) of the covered servicemember; or

5. any qualifying exigency (as defined by the Department of Labor) arising out of the fact that the employee's parent, child, or spouse is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.

A "Serious health condition" is an illness, injury, impairment, or physical or mental condition that involves either:

- Inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (*i.e.*, inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; **or**
- Continuing treatment by a health care provider, which includes:

(1) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:

- treatment two or more times by or under the supervision of a health care provider (*i.e.*, in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); **or**
- one treatment by a health care provider (*i.e.*, an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (*e.g.*, prescription medication, physical therapy); **or**

(2) Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; **or**

(3) Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; **or**

(4) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by health care provider is required, rather than active treatment; **or**

(5) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

A "serious injury or illness" in the case of a covered servicemember means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

Eligible employees may take FMLA leave in full week increments, an intermittent schedule or a reduced schedule up to twelve (12) weeks in a twelve (12) month period where medically necessary for a serious health condition of the employee or a sick family member or up to twenty-six (26) weeks in a twelve (12) month period to care for an injured servicemember. If an employee takes intermittent or reduced schedule FMLA leave, SPUH may require that the employee transfer temporarily to an alternative position so as not to unduly disrupt SPUH's operations while the employee is on the reduced or intermittent schedule. Intermittent or reduced schedule FMLA leave may not be taken in increments of less than one (1) hour. Leave time taken by an employee on reduced schedule or intermittent leave is calculated as a percentage of the employee's normal work week. Therefore, an employee who normally works thirty (30) hours per week and takes ten (10) hours of FMLA leave in one week, will have used one-third (1/3) of a work week of FMLA leave. For employees who work variable hours, the normal work week will be determined by the average hours per week worked by the employee during the twelve (12) weeks prior to the start of the employee's leave.

If SPUH employs both spouses, the aggregate FMLA leave taken by both spouses for the same qualifying reason may not exceed 12 weeks, or 26 weeks in the event the leave is taken to care for a covered servicemember.

Employees on FMLA leave are entitled to maintain coverage under SPUH's group health plan under the same terms and conditions as employees who are not on leave. SPUH reserves the right to recover from the employee any group health plan premium payments made by SPUH during any unpaid portion of the employee's FMLA leave if the employee fails to return to work at the end of the planned leave period, unless the employee's failure to return to work was due to circumstances beyond the employee's control.

Upon return from FMLA leave, most employees will be entitled to reinstatement in the same or equivalent position with equivalent pay, benefits and terms and conditions of employment. In some cases, reinstatement may be denied. Reinstatement may be denied if:

- 1 SPUH eliminates the employee's position while the employee is on leave and would have eliminated the position even if the employee had not been on leave; or
- 2 The employee is a "key employee" (one of the highest paid 10% of all employees within a 75-mile radius of the employee's worksite) and reinstatement of the employee would cause substantial and grievous economic harm to SPUH's operations; or
- 3 The employee fails to provide SPUH with the required post-leave fitness for duty certification, as described in the procedures section of this policy.

Employees requesting FMLA leave must give 30 days written notice if the need for the leave is foreseeable or, where the need for leave is foreseeable due to the active duty or impending call or order to active duty of a parent, child, or spouse in support of a contingency operation, employees must give such notice as is reasonable and practicable. Failure to do so will result in denial of leave until proper notice is given. If the need for

the leave is not foreseeable, employees must give notice as soon as is practicable under all the circumstances.

Employees requesting leave may be required to provide medical certification from a health care provider, or such other certification as the Department of Labor permits to support a request for leave related to the active duty or call to active duty in support of a contingency operation. SPUH may, at its sole discretion, require second or third opinions of medical certifications at SPUH's expense. Failure to provide the required pre-leave medical certification may result in denial of leave until such certification is provided. Employees also may be required to provide recertification on a reasonable basis and/or certification of fitness to return to work.

If an employee is granted an FMLA Leave due to his/her own illness, to the extent permitted by law, that employee must exhaust any accrued unused sick hours at the start of LOA. Should an employee wish to utilize accrued holiday and vacation time after sick hours have been exhausted, they may do so. Employees may also utilize accrued vacation and holiday hours if the LOA is to care for someone other than themselves.

This policy statement on The Family and Medical Leave Act of 1993 is intended to summarize the basic provisions of the FMLA. It is not intended to address all situations which may arise under the FMLA. Employees should address specific questions to Human Resources.

## **B. The New Jersey Family Leave Act**

SPUH is a covered employer under the New Jersey's Family Leave Act ("NJFLA"). The NJFLA entitles eligible employees of a covered employer to a maximum of 12 weeks per 24-month period of unpaid leave for specific NJFLA qualifying reasons.

Employees who have worked for SPUH for at least 12 months and have worked for SPUH at least 1,000 hours during the twelve (12) months immediately preceding their leave date are eligible for NJFLA leave. Eligible employees may take up to 12 weeks of unpaid leave in a 24-month period. The 24-month period is measured backwards from the date the employee intends to commence an NJFLA leave.

Leave may be taken for the care of a child following the birth or adoption of a child, or the care of a child, parent or spouse with a serious health condition. A "serious health condition" is an illness, injury, impairment, or physical or mental condition which requires continuing medical treatment or continuing supervision by a healthcare provider, or inpatient care in a hospital, hospice, or residential medical care facility. Any leave granted to an eligible employee to care for a newly born or adopted child may be taken in up to 12 consecutive weeks if the leave is commenced within one year of the birth or adoption. Eligible employees also may take leave to care for a seriously ill family member as noted above on a consecutive or reduced leave basis, or intermittently if medically necessary.

Employees on NJFLA leave are entitled to maintain coverage under SPUH's group health plan under the same terms and conditions as employees who are not on leave.

Upon return from NJFLA leave, most employees will be entitled to reinstatement to the same or equivalent position with equivalent seniority, status, benefits, pay and other terms and conditions of employment.

Employees requesting NJFLA leave to care for a newly born or adopted child must give 30 days' notice. To the extent that emergency circumstances only permit a shorter notice, such shorter notice will normally be accepted by SPUH. SPUH requires that employees provide notice in writing. If emergency circumstances make written notice impractical, an employee may provide oral notice initially but written notice is still required as soon as practical thereafter. Failure to provide the required notice will result in denial of leave until proper notice is given. Leave notice must be provided by the employee to the Human Resources Department.

Employees requesting NJFLA leave because of a serious health condition of their child, parent or spouse will be required to provide medical certification form a health care provider. SPUH reserves the right to require second and third opinions at SPUH's expense. Employees also may be required to sign a certification stating that a particular event has occurred that qualifies the employee for the NJFLA leave. Failure to sign such a certification can result in a denial of the requested leave, and falsely certifying can result in constructive performance feedback, up to and including discharge.

Individuals requesting NJFLA leave may request to be paid any unused accrued vacation and holiday hours.

Beginning July 1, 2009 employees may apply for up to six weeks of Family Leave Insurance benefits during a leave taken as described above. Eligible applicants will receive weekly benefits amounting to no more than two-thirds of their weekly pay, up to a certain maximum as determined by the New Jersey Department of Labor. (See Policy EB-12, New Jersey Family Leave Insurance)

This policy statement on the New Jersey Family Leave Act is intended to summarize the basic provisions of the NJFLA. It is not intended to address all situations which may arise under the NJFLA. Employees should address specific questions to the Human Resources Department.

### **C. Hardship Leave**

SPUH recognizes that circumstances of an exceptional nature, may arise that require an employee to request an unpaid leave of absence. Unpaid hardship leaves of absence will be granted to employees who have completed introductory period only under extraordinary circumstances, and are within the sole discretion of SPUH. This leave may be no longer than 30 days in duration. All unused accrued vacation and holiday hours must have been used.

**ATTACHMENT EB-4A**

TYPE OF LEAVE	ELIGIBILITY	DURATION	BENEFITS AND COMPENSATION
Federal Family & Medical Leave Act 1993 NJ Family Leave Act 1990	12 months service and must have worked: 1250 hours (FMLA) 1000 hours (NJFLA)	Up to 12 weeks in a 12 month period (FMLA) up to 12 weeks in a 24 month period (NJFLA)	<p><b>Medical Leave</b> – Sick time will be paid for the employee’s Medical Leave. Accrued Vacation and Holiday hours may be paid thereafter at employee’s requests.</p> <p><b>Family Leave</b> – Holiday &amp; Vacation hours may be paid.</p>
Military Leave (See Policy E-15)	No service time required	For length of time to fulfill an employee’s annual training commitment obligation – also see Military Leave Policy (E-15) for active duty information.	Employees will be paid the difference between their regular wages and military pay of up to two weeks for their annual training commitment.
Hardship Leave	3 months of service required	Not to exceed 30 days	Accrued Vacation and Holiday hours must have been exhausted.