

# Leave Policy Language: North Carolina

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A Q&A guide to state law on leave policy language for private employers in North Carolina. This Q&A suggests model language that may be included in employee leave policies that is consistent with state-specific requirements. Federal, local or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see *Leave Policy Language: State Q&A Tool* (<http://us.practicallaw.com/7-505-9586>)).

## FAMILY AND MEDICAL LEAVE POLICY

**1. Is there any specific language required for compliance with the state equivalent of the Family and Medical Leave Act (FMLA) in family and medical leave policies in your jurisdiction? If so, please include that language below. If there is not, please include sample recommended language for the state equivalent of an FMLA policy in your state.**

North Carolina has no state equivalent of the Family and Medical Leave Act (FMLA).

**2. Is there any specific language required for compliance with the state equivalent of the Family and Medical Leave Act (FMLA) in forms requesting family or medical leave in your jurisdiction? If so, please include it below. If there is not, please include sample recommended language.**

North Carolina has no state equivalent of the Family and Medical Leave Act.

**3. Is there any specific language required for compliance with the state equivalent of the Family and Medical Leave Act (FMLA) in forms supplying medical certification in support of family or medical leave in your jurisdiction? If so, please include it below. If there is not, please include sample recommended language.**

North Carolina has no state equivalent of the Family and Medical Leave Act.

## WORKERS' COMPENSATION LEAVE POLICY

**4. Is there any state-specific language required in a workers' compensation leave policy in your jurisdiction? If so, please include it below. If there is not, please include sample recommended language.**

North Carolina law does not require employers to provide workers' compensation leave for employees who have been injured on the job. Injured employees may take leave under other leave laws or as required as an accommodation.

## MILITARY LEAVE POLICY

**5. Is there any state-specific language required in a military leave policy in your jurisdiction? If so, please include it below. If there is not, please include sample recommended language.**

North Carolina requires an employer to:

- Grant unpaid leave to employees who are members of the North Carolina National Guard and called into service of the state by the Governor (*N.C. Gen. Stat. Ann. § 127A-111*).
- Restore National Guard members who are honorably discharged from duty to a suitable position (*N.C. Gen. Stat. Ann. § 127A-201*).
- Not discharge members of the military forces of North Carolina or the US who are called to perform emergency military duties (*N.C. Gen. Stat. Ann. § 127B-14*).

For more information on military leave in North Carolina, see *State Q&A, Leave Laws: North Carolina* (<http://us.practicallaw.com/w-000-2564>).

North Carolina's military leave laws do not require a specific language in a military leave policy. Best practice is for an employer to maintain a military leave policy that complies with both federal military leave laws as well as the North Carolina laws. Model leave policy language is provided below.

#### MODEL NORTH CAROLINA MILITARY LEAVE POLICY

Employees absent for military service will be granted time off from work or a leave of absence in accordance with applicable law. Military service includes active duty, active duty for training, initial active duty for training, inactive duty training and full-time National Guard duty covered by the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA).

**Written Notice:** When possible, employees should submit a written request for military leave to [PERSON/POSITION] 30 days before the absence begins. When 30-days' notice is not possible, employees should provide as much notice as possible.

**Continuation of Benefits:** While on military leave of absence, employees may continue their group health insurance as if they were working by paying their normal biweekly contributions by personal check. Employees may also choose to have their premiums withheld before their leave. [EMPLOYER NAME] [will/will not] continue to pay its portion of any premium cost(s) during this time. [Life insurance, accidental death and dismemberment and long-term disability provided by [EMPLOYER NAME] will remain in effect.] Additionally, employees' vacation eligibility will not be affected by their military leave of absence.

**Re-employment:** Employees who return from military leave and apply for re-employment as prescribed by federal law or North Carolina law will be re-employed in accordance with the USERRA and any applicable state law. On re-employment, all time spent on military leave will be added to the employees' pre-leave service to determine complete benefits accrued.

**[Other Benefits:** [EMPLOYER NAME] will pay the difference between military pay and the employees' regular pay, if any, for a maximum of [NUMBER] weeks per year for all employees absent for military service. To receive this additional pay, employees should present their military pay voucher to [PERSON/POSITION] when they return.]

#### DISABILITY LEAVE POLICY

**6. Is there any state-specific language required in a disability leave policy in your jurisdiction? If so, please include it below. If there is not, please include sample recommended language.**

North Carolina does not have a disability leave law, so no special language or policy is required. Employers who wish to provide paid or unpaid leave for medical absences, either in the form of a paid sick leave policy or a medical leave that is outside of Family and Medical Leave Act (FMLA) leave, should have written policies that both:

- Comply with the Americans with Disabilities Act (ADA).
- Are applied consistently to avoid discrimination or disparate impact claims.

Model sick leave policy language and short-term disability leave policy language for employees who are not covered by the FMLA are provided below.

#### MODEL NORTH CAROLINA SICK LEAVE POLICY (FOR EMPLOYERS COVERED BY THE FLMA)

Sick Leave is an absence from work due to your own or immediate family member's (spouse, domestic partner, child or your parent) sickness, accident or medical appointments. It is granted to you on the basis of [NUMBER] days or [NUMBER] hours per calendar year.

Exempt and nonexempt employees are allowed to take a minimum of [NUMBER] minutes of medical time per instance. Thereafter, it will be charged in [NUMBER] minute increments.

Sick leave days may be accumulated from year to year up to a maximum of [NUMBER] working days or [NUMBER] hours, at which point no more such leave may be accrued.

If you are going to be absent for a reason covered by this Sick Leave policy, you must personally contact [PERSON/POSITION] as soon as you know you will be absent. For unforeseen absences, you must contact [PERSON/POSITION] no later than the start of your scheduled report for work. If [PERSON/POSITION] is not available, then you must personally notify [PERSON/POSITION] and leave a message containing:

- The reason for the absence/tardiness.
- The date/time of your return to work.
- A telephone number and address at which you may be reached.

Leaving a message with a co-worker is not adequate notification.

If you wish to take sick leave for [NUMBER] or more consecutive days, documentation from your medical provider regarding your absence is required by [EMPLOYER NAME]. To confirm that sick leave was taken legitimately, [EMPLOYER NAME] reserves the right to obtain a second medical evaluation at your expense. In situations where you give [EMPLOYER NAME] appropriate notice that leave falls under the Family and Medical Leave Act, additional documentation will be required as set forth below.

All unused sick leave will be forfeited on termination of employment.

#### MODEL NORTH CAROLINA SHORT TERM DISABILITY LEAVE POLICY (FOR EMPLOYERS NOT COVERED BY THE FMLA)

Full-time employees are eligible for unpaid leave due to short term disabilities or illnesses. Short Term Disability Leave cannot exceed [NUMBER] weeks for an illness in a 12-month period measured backward from the date the leave is requested to begin. Employees requesting leave must provide written notice of the reason for the leave, including:

- A doctor's certificate, in a form satisfactory to [EMPLOYER NAME], documenting your inability to work.
- The nature of the illness.
- The expected date of return to work.

Employees may continue their benefits by making arrangements with [PERSON/POSITION] to pay the entire amount of the employees' portion of the monthly premium in advance each month.

Benefits such as paid time off will not accrue while you are on Short Term Disability Leave. No work activities are to be conducted during the disability period.

When employees are able to return to work, they should provide [EMPLOYER NAME] with as much notice as possible, preferably at least one week's advance written notice. The written notice [should/must] include a certificate from their doctor, on a form satisfactory to [EMPLOYER NAME], stating that they are medically able to return to their normal duties.

[EMPLOYER NAME] will attempt to return employees to the same or similar position held before the Short Term Disability Leave, subject to [EMPLOYER NAME]'s staffing and business requirements.

## PREGNANCY LEAVE POLICY

**7. Is there any state-specific language required in a pregnancy leave policy in your jurisdiction? If so, please include it below. If there is not, please include sample recommended language.**

North Carolina does not require employers to have a pregnancy leave policy or include specific language relating to pregnancy leave in a policy. Employers do not need to have a specific pregnancy leave policy apart from their federal Family and Medical Leave Act (FMLA), paid time off and other leave policies. Employers who wish to provide paid or unpaid leave specifically focused on childbirth or adoption, in addition to any sick leave or disability leave policies, and who are not otherwise covered by the FMLA, should develop written policies that comply with the Americans with Disabilities Act (ADA) and are applied consistently to avoid discrimination or disparate impact claims. Model parental leave policy language is provided below.

### MODEL NORTH CAROLINA PARENTAL LEAVE POLICY

Full-time employees may be granted a leave of absence of up to [NUMBER] [consecutive] weeks without pay upon the birth or adoption of a child, in addition to any Short Term Disability Leave [or leave under the Family and Medical Leave Act] to which an employee may be entitled. Parental Leave must be taken within [NUMBER] months of the child's birth or adoption and is subject to approval by [PERSON/POSITION] based on [EMPLOYER NAME]'s business needs at the time. Employees may continue their benefits by making arrangements with [PERSON/POSITION] to pay the entire amount of their portion of the monthly premium in advance each month. Benefits such as paid time off will not accrue while employees are on Parental Leave. Employees seeking Parental Leave must provide a minimum of 30 days' advance notice of their intent to take Parental Leave and the anticipated date of their return.

## OTHER TYPES OF LEAVE POLICIES

**8. Please describe other types of leave that should be considered when drafting a leave policy in your state (for example, voting leave, domestic violence leave, bone marrow leave or jury duty leave).**

In addition to the leaves discussed in *Questions 5, 6 and 7*, North Carolina requires leave for:

- Parental involvement in a child's school (*N.C. Gen. Stat. Ann. § 95-28.3*).

- Compliance with a juvenile court order (*N.C. Gen. Stat. Ann. § 7B-2705*).
- Domestic violence victims (*N.C. Gen. Stat. Ann. § 50B-5.5*).
- Jury duty (*N.C. Gen. Stat. Ann. § 9-32*).
- Vacation leave, if the employer offers paid vacation leave (*N.C. Gen. Stat. Ann. § 95-25.12*).

For more information about leave requirements under North Carolina law, see *State Q&A, Leave Laws: North Carolina* (<http://us.practicallaw.com/w-000-2564>).

For model polices, see:

- *Question 9: Model North Carolina Parent Involvement in School Leave Policy.*
- *Question 9: Model North Carolina Leave for Parent Compliance with Juvenile Court Orders Leave Policy.*
- *Question 9: Model North Carolina Domestic Violence Leave Policy.*
- *Question 9: Model North Carolina Jury Duty Leave Policy.*
- *Question 9: Model North Carolina Vacation Leave Policy.*

**9. For each type of leave described in Question 8, please provide any language required in a leave policy in your state. If there is no required language, please provide sample recommended language.**

### MODEL NORTH CAROLINA PARENT INVOLVEMENT IN SCHOOL LEAVE POLICY

Employees in North Carolina who are parents or guardians of school-aged children (daycare through high school) will be granted up to four hours of unpaid leave per calendar year to attend or otherwise be involved at their child's school when the following conditions are met:

- The leave shall be at a mutually agreed upon time between you and [PERSON/POSITION].
- [PERSON/POSITION] may require you to provide a written request at least 48 hours before you take leave.
- [PERSON/POSITION] may require written verification from the school that you attended or was otherwise involved at the school at the time of leave.

### MODEL NORTH CAROLINA LEAVE FOR PARENT COMPLIANCE WITH JUVENILE COURT ORDERS LEAVE POLICY

Employees who are subject to juvenile court orders will be given time off to comply with properly issued court orders, as required by law.

### MODEL NORTH CAROLINA DOMESTIC VIOLENCE LEAVE POLICY

Employees who have been injured or threatened by a third party will be given reasonable time off to obtain or attempt to obtain a civil no-contact order or domestic violence protective order, as required by law.

**MODEL NORTH CAROLINA JURY DUTY LEAVE POLICY**

Employees will be granted jury duty leave if they are legally served with a summons to serve on a jury. [Employees who are called to serve on a jury will receive their regular pay minus any pay received by the employees from the court (other than compensation to cover incidental expenses, such as parking) for a maximum period of [NUMBER] days per jury session, including grand jury service. Wage payments over [NUMBER] days per jury session will be made at the sole discretion of [EMPLOYER NAME].]

Employees should provide [PERSON/POSITION] with a copy of the summons as soon as they receive notification for jury duty, so that necessary staffing arrangements can be made.

When not actively serving on the jury, employees will be required to report to work. After returning from jury duty, employees must submit proof of attendance and earnings to [PERSON/POSITION].

**MODEL NORTH CAROLINA VACATION LEAVE POLICY**

**Eligibility:** All regular full-time [and part-time] employees who have been actively working for at least one day of the calendar year are thereafter eligible to accrue paid time off (PTO) in accordance with the schedule below. Employees on a leave of absence will accrue PTO as specified below. During the first year of service, employees must work at least 90 days before they accrue any PTO.

**Annual Allowance and Accrual:** Eligible employees will accrue PTO on a monthly basis during the calendar year (January 1 through December 31) based on their length of service in accordance with the following schedule and subject to the accrual caps set forth below:

- Under [NUMBER] years, [NUMBER] days ([NUMBER] hours).
- [NUMBER] to [NUMBER] years, [NUMBER] days ([NUMBER] hours).
- [[NUMBER] to [NUMBER] years, [NUMBER] days ([NUMBER] hours).]
- Over [NUMBER] years, [NUMBER] days ([NUMBER] hours).

PTO may be used before it is accrued, provided that it is used in the same calendar year that it would otherwise accrue. PTO is accrued and prorated in accordance with the number of hours worked in a regular work week.

**Carry Over from Year-to-year:** Employees are encouraged to use their accrued PTO in the calendar year earned. Employees may carry over no more than ten PTO days from year to year (the Carry Over Cap). Any accrued and unused PTO as of December 31 of any calendar year that is more than the Carry Over Cap cannot be carried over into the following year and will be forfeited without pay, except where forfeiture is prohibited by state or local law.

**No Pay in Lieu of Vacation:** Employees will not be paid for unused PTO days. Employees who are on leave of absence and unable to use PTO will not be paid for unused PTO days, except as required by state or local law.

**Holidays:** When a scheduled holiday occurs during your PTO, that day is not counted as used vacation.

**Effect of Service Anniversary:** Employees who complete a service anniversary and become eligible for additional PTO may schedule the additional PTO anytime during the calendar year in which the anniversary occurs.

**PTO in the Year of Termination**

**Voluntary and Involuntary Terminations:** Employees who voluntarily terminate from [EMPLOYER NAME] and provide at least two weeks' notice or who are involuntarily separated for reasons other than misconduct or gross violation of [EMPLOYER NAME] policy will be paid for unused accrued PTO, provided they have been actively at work at least one day during the calendar year, except as required by state or local law. PTO will be accrued by completed months of employment. Employees must be actively employed on the last working day of the month (in accordance with their normal work schedule) to receive credit for that month. The amount of available vacation for the year will be calculated in hours and any accrued unused PTO will be paid out to the employees.

**Voluntary Terminations Without Adequate Notice or Terminations for Misconduct or Gross Policy Violation -** Employees who voluntarily terminate from [EMPLOYER NAME] without providing at least two weeks' notice or who are involuntarily separated misconduct or gross violation of [EMPLOYER NAME] policy will forfeit all accrued but unused PTO, unless prohibited by law.

**Repayment for Use of Unaccrued PTO:** If more PTO has been used than accrued as of the date of termination, the amount used but not accrued will be deducted from the final paycheck, with the employees' written permission. If this is not administratively possible, employees are responsible for reimbursing [EMPLOYER NAME] for the excess PTO used. In no case shall a deduction from the paycheck result in employees' compensation for the final pay period falling below minimum wage.

**No Extension of Service:** PTO cannot be used to extend [EMPLOYER NAME] service.

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