

## FAMILY AND MEDICAL LEAVE

- Required
- Local
- Notice

Consistent with the federal Family and Medical Leave Act (FMLA) of 1993 as amended, the Board of Education recognizes the right of eligible employees to unpaid family and medical leave for up to twelve (12) workweeks during any twelve (12) month period. For the purposes of family and medical leave, the twelve month period necessary for eligibility shall be a rolling year. A rolling twelve (12) month period is measured backward from the date an employee uses any FMLA leave. The Board of Education shall ensure that all eligible employees who use such leave shall have their health benefits continued, shall not have any previously accrued benefits altered, and shall be returned to an equivalent position according to established Board of Education practices, policies and collective bargaining agreements.

An eligible employee must have been employed for at least twelve (12) months, have worked at least 1,250 hours during the prior twelve months, and be employed at a worksite where at least 50 employees are employed by that employer within a 75 mile radius of that worksite.

### **Basic Leave Entitlement**

Family Medical Leave Act (FMLA) requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son, daughter or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

### **Definition of Serious Health Condition**

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

### **Family and Medical Leave**

Family leave is available when a child is born to the employee, adopted by an employee or one is placed with the employee for foster care. Medical leave is available in order for the employee to take care of a spouse, child, parent who has a serious health condition, when the employee has a serious health condition rendering him/her unable to perform the functions of the employee's job. Military caregiver leave is available to employees who are family members of covered service members with a serious illness or injury incurred in the line of duty on active duty. Military caregiver leave is a special entitlement that allows the employee to extend FMLA leave to 26 workweeks. Qualifying exigency leave is available to employees when a family member is called to active duty in support of a contingency operation.

A child shall include any individual whether biological, adopted, a foster child, a stepchild, a legal ward, or a child standing in loco parentis who is under eighteen years of age or, if over eighteen, is incapable of self-care due to a mental or physical disability. A parent shall include the biological parent of the employee or an individual who stood in loco parentis to the employee when he/she was a child. Next of kin shall mean the nearest blood relative other than spouse, parent, son, daughter, as defined in federal regulation.

Family leave must be taken within one year of the birth or placement of the employee's child. If both spouses are employed by the School District, the combined amount of leave for family leave or medical leave may be limited to twelve weeks.

### **Military Family Leave Entitlements**

Eligible employees whose spouse, son, daughter or parent is on covered active duty or called to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service-member during a single 12-month period. A covered service member is: (1) a current 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\*; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.\*

\*The FMLA definitions of “serious injury or illness” for current service-members and veterans are distinct from the FMLA definition of “serious health condition”.

The Board of Education may require that a request for leave because of a qualified exigency arising from the fact that the employee's spouse, son, daughter, or parent is on active duty or has been notified of an impending call to active duty be supported by a certification issued in accordance with regulations.

### **Use of Leave**

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

### **Benefits and Protections**

During FMLA leave, the School District shall maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

### **Right to Benefits During Leave**

An eligible employee is entitled to a combined total of twelve weeks of unpaid family and medical leave. Any employee who uses the unpaid leave shall have his/her health benefits continued during the leave, shall not have any previously accrued benefits altered and shall be returned to an equivalent position according to established Board policies and collective bargaining agreements. The employee is entitled to accrue seniority during FMLA leave only during the period in which the employee is concurrently using paid personal/sick leave.

### **Intermittent Leave**

When it is medically necessary, an employee may take FMLA leave intermittently, i.e taking leave in separate blocks of time for a single qualifying reason or on a reduced leave schedule, however, the School District may transfer the employee to a comparable position if it will better accommodate such intermittent periods of leave. For instructional employees who request medical leave and it is foreseeable that the medical treatment shall cause the employee to be on leave for more than 20% of the total number of working days in the period of leave, the School District may require the employee to take a block of time or to transfer to an equivalent position for which the employee is qualified, but which better accommodates intermittent periods of leave.

When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the School District's operation.

Leave to care for or bond with a newborn child or for a newly placed adopted or foster child may only be taken intermittently with the School District's approval and must conclude within 12 months after the birth or placement.

### **Employee Responsibilities**

An employee may elect, or the School District may require, an employee to use accrued paid vacation, personal or family leave for purposes of an FMLA leave. An employee may elect, or the School District may require, an employee to use accrued vacation, personal, or medical/sick leave for purposes of a medical leave.

The Board of Education shall ensure that FMLA is provided to all eligible employees, unless they are covered by a collective bargaining agreement which provides greater leave benefits than this Act.

The employee shall notify the School District of his/her request for leave, if foreseeable, at least thirty (30) days prior to the date when the leave is to begin. If such leave is not foreseeable then the employee shall give such notice as is practical.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

The School District may require a certification from a health care provider if medical leave is requested. When an employee returns following a leave, he/she must be returned to the same or equivalent position of employment. The Superintendent of Schools or his/her designee may reassign a teacher to a different grade level, building or other assignment consistent with the employee's certification and tenure area. . Upon request by the School District, the employee must provide the certification within fifteen (15) days. The certificate shall include:

1. the date on which the serious health condition commenced;
2. the probable duration of the condition;
3. the appropriate medical facts within the knowledge of the health care provider regarding the condition;
4. a statement that the employee is needed to care for the family member and an estimate of the amount of time that such employee shall be needed or a statement that the employee is unable to perform the functions of the employee's position; and
5. the dates and duration of medical treatment if the request for intermittent leave is for a planned medical treatment.

If the School District doubts the validity of the certification, then, at the School District's expense, a second opinion may be required from a health care provider selected by the School District. The school physician cannot give this opinion. If the two opinions conflict, a third health care provider, at the School District's expense, may be chosen by the two parties to render a final opinion.

### **Employer Responsibilities**

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

### **Restoration**

An instructional employee, who begins any type of leave at least five (5) weeks before the end of an academic term, may be required not to return until the new term begins if the leave is at least three (3) weeks long and the employee would return during the last three (3) weeks of the term.

An instructional employee who begins leave, for any purpose other than personal illness, less than three (3) weeks prior to the end of the term and the leave is longer than five (5) working days, may be required not to return until the new term begins.

### **Failure to Return**

The School District may recover the health care premiums paid during the leave if the employee fails to return from the leave. However, recovery cannot occur if the employee fails to return because of the continuation, recurrence, or onset of a serious health condition or due to circumstances beyond the control of the employee.

### **Effect on Existing Laws or Agreements**

The Board of Education shall ensure that family and medical leave, consistent with the Family and Medical Leave Act, is provided to all eligible employees, whether or not they are covered by a collective bargaining agreement. Any collective bargaining agreement which contains greater leave benefits than this policy shall remain in force.

**Unlawful Acts by Employers**

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

**Enforcement**

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

The Board of Education shall provide family and/or medical leave required pursuant to the Family Medical Leave Act to all eligible employees, unless they are covered by a collective bargaining agreement which provides greater leave benefits than this Act.

The School District shall post a notice prepared or approved by the Secretary of Labor stating the pertinent provisions of the Family and Medical Leave Act, including information concerning enforcement of the law.

Ref: 29 U.S.C. §§ 207, 2601, 2611, 2612, 2613, 2614, 2618, 2619.  
29 CFR 825.110, 825.309, 825.600, 825.603, 825.800.

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