

FAMILY AND MEDICAL LEAVE REGULATION

Consistent with the federal Family and Medical Leave Act of 1993, as amended, (“FMLA”), the Board of Education shall provide a minimum of 12 weeks of unpaid leave in a 12 month period for its eligible employees. Such 12-month period is based upon a twelve (12) month period measured forward from the date of the employee’s first FMLA leave usage. An eligible employee must have been employed for at least twelve 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.

Right to Benefits During 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 not entitled to accrue seniority during the leave.

An employee may elect, or the District may require, an employee to use available paid leave time for purposes of a family or medical leave. However, an employee may only use accrued medical/sick leave in accordance with the collective bargaining agreement.

Family and Medical Leave

An eligible employee is entitled to a combined total of twelve weeks of unpaid family and medical leave. Family leave is available when a son or daughter is born to the employee, adopted by an employee or one is placed with the employee for foster care. Family leave shall also be provided to care for a child within one (1) year of birth or placement. Medical leave shall be provided because of any qualifying exigency arising out of the fact the employee’s spouse, son, daughter or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty status). Medical leave is further available in order for the employee to take care of a spouse, minor child (under 18 years old), or parent who has a “serious health condition,” as defined by the FMLA, or when the employee has a “serious health condition” rendering him/her unable to perform the functions of the employee's job. Medical leave shall also be provided in order for the employee to take care of an adult child (18 years old or older) who is incapable of self-care due to a disability and has a “serious health condition.”

A son or daughter 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 son/daughter. Furthermore, a serious health condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider that renders the person incapacitated for more than three (3) consecutive calendar days. Furthermore, the first visit to a health care provider for an employee claiming a "serious health condition" under FMLA must occur within seven (7) days of the aforementioned incapacity with the second required visit occurring within thirty (30) days of the incapacitating event. In order for an employee to claim the need for continuous treatment under FMLA for a chronic serious health condition, the condition must require a minimum of two

(2) visits per year to a healthcare provider, continue over an extended period of time, and may cause episodic rather than a continuing period of incapacity. A "serious health condition" is also defined as any period of incapacity related to pregnancy or for prenatal care.

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 same school District, the combined amount of leave for family leave or medical leave to care for a sick parent may be limited to twelve weeks. This limitation does not include medical leave to care for a child or spouse or for an employee's personal medical/sick leave.

Military Family Leave Entitlements

Military Caregiver Leave

An eligible employee who is the spouse, child, parent, or next of kin (defined as the nearest blood relative) is entitled to up to twenty-six (26) weeks of leave in a single twelve (12) month period to care for a "military member" who is:

- a) Recovering from a service-connected serious illness or injury sustained while on active duty; or
- b) Recovering from a serious injury or illness that existed prior to the service member's active duty and was aggravated while on active duty; or
- c) A veteran who has a qualifying injury or illness from service within the last five (5) years and aggravates that illness or injury.

This military caregiver leave is available during a single twelve (12) month period during which an eligible employee is entitled to a combined total of twenty-six (26) weeks of all types of FMLA leave. Military Caregiver Leave may be combined with other forms of FMLA-related leave providing a combined total of twenty-six (26) weeks of possible leave for any single twelve (12) month period; however, the other form of FMLA leave when combined cannot exceed twelve (12) of the twenty-six (26) weeks of combined leave. Military Caregiver Leave has a set "clock" for calculating the twelve (12) month period for when FMLA leave begins and tolling starts at the first day of leave taken.

The term "military member" means:

- a) A member of the Regular 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
- b) A veteran of the Regular Armed Forces, including a member of the National Guard or Reserves, (discharged or released under condition other than dishonorable) who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.

"Qualifying Exigency" Leave/Call to Active Duty

An "eligible" employee is entitled to FMLA leave because of "a qualifying exigency" arising out of circumstances where the spouse, child, or parent of the employee is serving in the Regular Armed Forces, the National Guard or the Reserves and is on active duty during a war or national emergency called for by the President of the United States or Congress, or has been notified of an impending call to active duty status, in support of a contingency operation. There is no "qualifying exigency" unless the military member is or is about to be deployed to a foreign country.

A "qualifying exigency" related to families of the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve personnel on (or called to) active duty to take FMLA protected leave to manage their affairs is defined as any one of the following reasons:

- a) Short-notice deployment;
- b) Military events and related activities;
- c) Childcare and school activities;
- d) Parental care leave;
- e) Financial and legal arrangements;
- f) Counseling;
- g) Rest and recuperation (for up to fifteen [15] calendar days);
- h) Post-deployment activities; and
- i) Any additional activities where the employer and employee agree to the leave.

In any case in which the necessity for leave due to a qualifying exigency is foreseeable, the employee shall provide such notice to the employer as is reasonable and practicable. This military-related leave is for up to twelve (12) weeks during a single twelve (12) month period. Leave may be taken intermittently or on a reduced leave schedule.

Notice to Take Leave

The employee shall notify the District of his/her request for family or medical leave at least 30 days prior to the date when the leave is to begin, when such leave is foreseeable. If such leave is not foreseeable then notice shall be given as early as is practical. If the employee requests medical leave, reasonable attempts shall be made to schedule treatment so as not to disrupt the District's operations.

Intermittent Leave

An employee who requests family leave after the birth or placement of a health child, shall not be provided intermittent leave or a reduced leave schedule unless the employee and District mutually agree. Intermittent leave may be provided for medical leave, and it must be that such medical need can be best accommodated through an intermittent schedule. Leave due to a qualifying exigency may be taken on an intermittent basis as well. Employees must make reasonable efforts to schedule the treatment as to not disrupt the District's operations. The 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 percent of the total number of working days in the period of leave, the District may require the employee to take leave for a period (or periods) of a particular duration, not greater than the duration of the planned treatment, or to transfer to an equivalent alternate position for which the employee is qualified, but which better accommodates intermittent periods of leave than does the employee's regular position. If an instructional employee does not give the required notice of foreseeable FMLA leave, the District may alternatively require the employee to delay the taking of leave until the notice provision is met.

Certification

The District may require the employee requesting medical leave to present a certification from the health care provider of the person for whom the employee is taking the leave. The District may also require that an employee's leave because of a qualifying exigency or to care for a covered service member with a serious injury or illness be supported by a certification. Upon request by the District, the employee must provide the certification within 15 days.

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

Restoration

An instructional employee, who begins any type of leave more than five weeks before the end of an academic term, may be required not to return to work until the new term begins if the leave is at least three weeks long and the employee would return to work during the last three weeks of the term. An instructional employee who begins leave for any purpose other than personal illness, less than five weeks prior to the end of an academic term, may be required not to return to work until the new term begins if the leave is greater than two weeks and the employee would return to work during the last two weeks of the term. An instructional employee who begins leave, for any purpose other than personal illness, less than three weeks prior to the end of the term and the leave is longer than five working days, may be required not to return to work until the new term begins.

The District reserves the right to deny restoration to an employee who is among the highest paid 10 percent of the employees if specific conditions are met.

Failure to Return

The District may recover the health care premiums paid during the leave when the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires. However, recovery cannot occur if the employee fails to return because of the continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered servicemember, which would otherwise entitle the employee to leave under the FMLA (in such instances the District may require medical certification) or due to other circumstances beyond the control of the employee.

Effect on Existing Laws or Agreements

The Board 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.

Notice of Policy

The 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 the procedures for filing complaints of violations of the FMLA with the U.S. Department of Labor's Wage and Hour Division.

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