

MOUNT PLEASANT COTTAGE SCHOOL UNION FREE SCHOOL DISTRICT**SUBJECT: FAMILY AND MEDICAL LEAVE ACT OF 1993 GUIDANCE DOCUMENT****I. ELIGIBLE EMPLOYEES**

- A. To be eligible for FMLA leave, the employee must meet the following criteria:
1. been employed for at least 12 months (needn't be consecutive unless break in service more than 7 years [exceptions for National Guard or Reserve Service and written agreements] and may include 52 weeks of partial or whole employment -- 29 CFR §825.110[a][1] and [b]).
 2. been employed for at least 1,250 hours of service during the 12 calendar months immediately preceding the commencement of the leave (29 CFR §825.110[a][2]). (Exception for employee retiring from National Guard or reserve military obligation.)
 3. qualification for leave is measured twelve (12) months backward from the leave commencement date (29 CFR §825.110[d]). An employee may be on non-FMLA leave at the time he meets the eligibility requirements, and in that event, any portion of leave taken for an FMLA qualifying reason would be FMLA leave.
 4. Executive, administrative and professional employees (including teachers) under the FLSA will be presumed to have worked at least 1,250 hours during the previous 12 months (29 CFR §825.110[c]), since records of their hours are not maintained (29 CFR §825.500[d]).
 5. Teacher assistants and aides are treated along with non-instructional employees for the purposes of counting hours of employment. (29 CFR § 825.800).

II. LEAVE ENTITLEMENTS

- A. A total of 12 work weeks of leave during any 12 month period for one or more of the following purposes:
1. child care for birth of an employee's son or daughter.
 2. adoption or foster care of a child by an employee.
 3. care for a spouse, child or parent with a serious health condition.
 4. an employee's own serious health condition which renders him/her unable to perform work functions [disability within the meaning of the Americans with Disabilities Act, 42 USC §12101 et. seq.; 29 CFR Part 30] (FMLA §102[a]; 29 CFR §825.112).

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5. because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.
6. to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the service member for a total of 26 work weeks during a single 12-month period.

B. DEFINITIONS

1. Employer – The Mount Pleasant Cottage School, Union Free School District.
2. Spouse - A husband or wife, as defined or recognized under State Law (29 CFR §825.122[a]).
3. Parent - The biological adoptive, step or foster parent of the employee as well as an individual who stood in loco parentis or his/her legal guardian; and not an in-law (29 CFR §825.122[b]).
4. Son or Daughter - A biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis of a child under 18, or over 18 and in need of assistance with or supervision over daily living skills due to mental or physical disabilities (29 CFR §825.122[c]).
5. Serious Health Condition
 - (a) For purposes of FMLA, “serious health condition” entitling an employee to FMLA leave means an illness, injury, impairment, or physical or mental condition that involves:
 - (1) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or
 - (2) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

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(i) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(A) Treatment two or more times by a health care provider within 30 days (unless extenuating circumstances - such as the health care provider does not have any available appointments during that time period), by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(B) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. Treatment requires an in person visit. The first (or only) in-person treatment visit must take place within 7 days of the incapacity.

(ii) Any period of incapacity due to pregnancy, or for prenatal care.

(iii) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(A) Requires periodic visits for treatment by a health care provider, or by a nurse (at least twice a year) under direct supervision of a health care provider;

(B) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(C) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(iv) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

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(v) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

(b) Treatment for purposes of paragraph (a) of this section includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under paragraph (a)(2)(i)(B), a regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(c) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of this section are met.

(d) Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

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(vi) Absences attributable to incapacity under paragraphs (a)(2) (ii) or (iii) qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness. (29 CFR §825.114).

6. Health Care Provider - Health care provider means:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or

(2) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law; and

(3) Nurse practitioners, nurse-midwives and clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; and

(4) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

(5) Any health care provider from whom an employer or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

(6) A health care provider as defined above who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that country. (29 CFR §825.125).

C. THE APPLICABLE 12 MONTH PERIOD

While the employee is entitled to a total of 12 work weeks of leave during a 12 month period, the employer has chosen in determining the 12 month measure, the following:

12 months backward from the employee's first FMLA leave date.

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D. NATURE OF LEAVES

1. Child Care for Pregnancy or Birth

- a. leave rights apply equally to fathers and mothers in the case of child care leaves (29 CFR §825.120[a]).
- b. child care leave may begin before the birth for prenatal reasons (29 CFR §825.120[a]).
- c. child care leave may begin before actual placement of a child in foster care or adoption of a child (e.g., time for counseling sessions, court appearance, attorney-client and physician meetings or examinations) (see 29 CFR §825.121[a]).

2. Child Care For Adoption or Foster Care

- a. there is no age maximum on the adoption of a child or a child received into foster care placement.
- b. the time within which a child care adoption or foster care leave must be taken is 12 months from the birth, adoption or placement of the child (FMLA §102[a][2] - 29 CFR §825.121[a][2]).
- c. if spouses work for the same employer, only a combined 12 weeks may be taken within the 12 month period for the purposes of child care (29 CFR §825.121[a][3]).
- d. intermittent leave for the purposes of child care, foster care and adoption is subject to the employer's permission and is not a right granted by law (29 CFR §825.121[b]).

3. Intermittent Leave or Reduced Leave Schedule

- a. This leave refers to serious health conditions as described at II(B)(4), *Supra*, at page 2.
- b. in addition to the availability of up to 12 consecutive weeks of leave, intermittent leave is available, as is reduced schedule leave, when the same is medically necessary (FMLA §102[b][1]).
- c. medical necessity refers to the health care provider's certification that the medical need "can be best accommodated" through an intermittent or reduced leave schedule (29 CFR §825.202[b]).

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- d. spouses working for the same employer are entitled to a combined 12 weeks of leave to care for a parent (but not an in-law) (29 CFR §825.201[b]).
 - e. intermittent leave is leave that is taken in separate blocks of time, rather than continuously, broken down to units upon the same basis as the breakdown employed for sick leave use (e.g., for medical appointments, chemotherapy, radiation, physical therapy for severe arthritis and dialysis) (see 29 CFR §825.201[b]). If FMLA leave is taken for a period ending with the school year and beginning the following semester, it will be deemed to be consecutive, rather than intermittent leave. (29 CFR §825.202[a])
 - f. reduced leave schedule refers to a diminished number of hours in the workday (e.g., from 8 to 6 hours, due to limited health capacity -- see 29 CFR §825.202[a]).
 - g. the increment of time for intermittent leave may be as brief as the minimum interval of time used in the employer's payroll system to account for absences (e.g., one hour or less) (29 CFR §825.205[a]).
 - h. where the need for intermittent or reduced schedule leave is foreseeable, at least 30 days prior written notice shall be given by the employee to the employer. (FMLA §102[e][1] and [2]; 29 CFR §825.302-303).
 - i. the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations (FMLA §102[e][2][a]); (29 CFR 825.203).
 - j. the medical certification should be presented, upon the employer's request, at the time of leave, but must be presented within 15 calendar days of the employer's request, where practicable (29 CFR §825.305[a] and [b]).
 - k. an employee requesting intermittent or reduced schedule leave due to a planned medical treatment may be required to transfer temporarily to an available alternative position:
 - 1. for which the employee is qualified;
 - 2. with equivalent pay and benefits;
 - 3. which better accommodates the treatment schedule (see FMLA §102[b][2]; 29 CFR §825.204[a]).
 - l. an employee able to return to work full-time must be restored to the same or equivalent position held at the time intermittent or reduced schedule leave commenced.
4. Leave because of a qualifying exigency.
- a. Eligible employees may take FMLA leave while the employee's spouse, son, daughter, or parent is on active duty or called to active duty status for one or more qualifying exigency (29 CFR 825.126[a]).

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- b. A qualifying exigency is defined as: short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities and additional activities where the employer and employee agree to the leave.
5. Leave to care for a covered service member with a serious injury or illness.
 - a. An eligible employee is entitled to 26 workweeks of leave to care for a covered service members with a serious injury or illness during a single 12 month period.

E. EMPLOYEE NOTICE REQUIREMENTS

1. Foreseeable Leave

If the leave is foreseeable, at least 30 days prior verbal or written notice of the timing and expected duration of the leave is required by the employer. The employee does not have to specifically ask for FMLA leave, but must provide a FMLA qualifying reason for the leave. Where unforeseeable, notice must be given as soon as possible and practical (within one or two working days of the need for leave becoming known to the employee) (see 29 CFR §825.302 and §825.303) or else the employer may deny the leave until there is 30 days actual notice (see 29 CFR §825.304[b]).

2. Employee Notice for Unforeseeable Leave

When thirty (30) days notice is not possible, an employee must provide notice to the employer as soon as practicable.

III. PAID AND UNPAID LEAVE

A. The employer shall not be required to provide notice to the employee of its intent to designate leave as FMLA leave time until the employer has had an opportunity to ascertain whether a medical condition constitutes a serious health condition or, in the case of child-care leaves, when reasonable evidence is presented to support such leave. The employer shall be permitted to retroactively designate leave time as FMLA leave time. If an employee alleges prejudice or harm as a result of a retroactive designation, that employee must prove impairment of his or her FMLA rights and the resulting prejudice. The employer must then evaluate that employee's individual situation to determine the appropriate remedy.

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B. Either an eligible employee or employer may choose to substitute accrued paid leave for FMLA leave. The paid leave would then run concurrently with the unpaid FMLA leave (29 CFR 825.207 [a]).

C. If the employee is receiving workers' compensation or disability benefits, the employer may run FMLA leave concurrently (29 CFR 825.207[e]).

D. Where an employer provides a greater period of unpaid leave than FMLA, the designation by the employer determines the FMLA leave. An employee may not elect when the FMLA leave begins and ends. (29 CFR § 825.700[a]).

Unpaid leave under FMLA has a neutral effect upon exempt status under FLSA (FMLA § 102[c]).

E. Instructional employees on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

IV. CERTIFICATION OF LEAVES

A. This employer requires timely certification of a medical leave application pursuant to these standards:

1. date when serious health condition commenced;
2. its probable duration;
3. relevant medical facts within the health care provider's knowledge which the employer should need to know;
4. in the case of caring for another by the eligible employee, a statement of the need for the employee to provide care, including a time requirements estimate;

[NOTE: "Care" includes physical and psychological, and may be provided intermittently, where several family members share in the care duties (29 CFR §825.116)]

5. where the medical leave is the employee's own, a statement that s/he is unable to perform the functions of the position;
6. in the case of intermittent leave for planned medical treatment, the dates on which the treatment is scheduled to be given and its duration (see FMLA §103[a] and [b]).

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7. Appendix "A" to this Guidance Document are the forms to be used which indicate the information needed to meet medical certification requirements for a serious health condition leave (29 CFR §825.306).
8. Appendix "B" to this Guidance Document is the employer's response to the employee's request for leave, to be furnished to the employee. This form sets forth the consequences for failure to timely furnish medical certifications. Appendix "B" also contains follow-up designation notice.
- B. This employer may 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.
- C. The employer, by either a health care provider, human resources professional, leave administrator or management official (but in no circumstances direct supervisor), may contact the employee's health care provider directly for purposes of clarifying or authenticating a medical certificate only (29 CFR §825.307[a]).

V. SECOND OPINIONS AND CONFLICTING OPINIONS REGARDING CERTIFICATION

A. When the employer has reason to doubt the validity of a medical opinion regarding a medical leave, the employer may require, at its expense, that the employee obtain a second health care provider's opinion by one designated or approved by the employer. Such designee may not be employed by the employer or regularly utilized by the employer (FMLA §103[d][1]; 29 CFR §825.307[a] and [b]).

B. A third health care provider resolves conflicts between the first and second opinions via a final and binding decision (FMLA §103[d][2]; 29 CFR 825.307).

C. Subsequent recertifications may be required by an employer no more often than 30 days unless an exception exists (e.g.: a requested extension of leave, circumstances such as the duration or frequency of absences have changed or the employer receives information which casts doubt on the validity of the absence) (FMLA §103[e]; 29 CFR §825.308).

VI. FITNESS-FOR-DUTY CERTIFICATION

A. As a condition of job restoration, the employer may require that the employee obtain and present certification from the employee's health care provider that the employee is able to return to work (29 CFR §312[a]).

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- B. The FMLA designation notice shall advise the employee that the employer will require a fitness-for-duty certification to return to work and whether the fitness-for-duty certification must address the employee's ability to perform the essential job functions (29 CFR §312[d]).

VII. RESTORATION TO POSITION UPON RETURN TO REGULAR WORK SCHEDULE

- A. Upon return from a covered leave, the employee must be restored by the employer to the position from which leave was granted; or
- B. Restored to a position which is virtually identical to the position previously held in terms of pay, benefits and working conditions, including privileges, perquisites and status (FMLA §104[a][1]; 29 CFR §825.214 and §825.215). If, for example, the employee went on leave from the night shift, s/he must be restored to the night shift (29 CFR §825.216[a]).
- C. Restoration may be avoided if it can be shown that the employee would have been laid-off anyway.
- D. The employer may require an employee to periodically report on intent to return status (29 CFR §825.311[a]).
- E. If an employee gives the employer an unequivocal notice of intent not to return to work, the employer's obligations to maintain health benefits (except pursuant to COBRA requirements) and restore to position cease (29 CFR §825.311[b]).
- F. The employer has adopted a fitness for duty certification policy, which uniformly applies to employees returning from medical leaves of the same nature (29 CFR §825.312[a]).
- G. Fitness for duty review must be limited to the condition(s) for which the FMLA leave was granted (29 CFR §825.312[b]).
- H. The terms in a collectively negotiated agreement, if any, shall supersede the return to work (fitness for duty) requirements of FMLA, so long as they do not run afoul of the Americans with Disabilities Act (Id.).
- I. This employer may deny restoration from leave until the employee furnishes a required fitness for duty certification, but only if the notice requirements of §825.312[d] have been met. (The §825.301 "notice of rights" to FMLA leave applicants, including fitness for duty requirements upon return to work and a specific individualized notice of certification requirement, must be given at or immediately after leave commencement unless the employer could not foresee the need for such notice when the leave commenced (such as when leave begun as paid vacation, but due to intervening unforeseen accident, became a leave for a serious health condition) -- see 29 CFR §825.312[e]).

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- J. If an employee on FMLA leave voluntarily accepts a light duty assignment, the employee retains rights to job restoration to the same or equivalent position held prior to the start of the leave for a cumulative period of up to 12 workweeks. The period of time in a light duty assignment cannot count, however against the 12 weeks of FMLA leave (§825.220[d] and §702[d][2]).
- K. Fraudulent actions by employees are not protected under FMLA (*see* 29 CFR §825.216[d]).

VIII. HEALTH BENEFITS DURING LEAVE

- A. The employer shall maintain group health plan coverage for employees on FMLA leaves as if they were actively engaged at work for the duration of the leave (FMLA §104[c]; 29 CFR §825.209 and §825.800).
- B. The Employer does not maintain group health insurance benefits for employees who are laid off during the course of FMLA leave and employment is terminated, unless pursuant to a collectively negotiated agreement (29 CFR §825.216[a][1]).
- C. Instructional employees on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.
- D. Group health care coverage shall extend beyond health insurance, alone, to any other health related benefits provided such as dental care, vision care, mental health counseling (e.g., EAP) and substance abuse treatment (29 CFR §825.209[b]).
- E. Improvements in benefits accrete to an employee on FMLA leave, as if s/he was actively engaged at work (29 CFR §825.209[c]).
- F. Window periods for plan or coverage changes must be made on notice to those on FMLA leaves, giving them an opportunity to participate (29 CFR §825.209[d]).
- G. While on FMLA leave, an employee may opt-out from coverage, but must be allowed to re-enter the plan(s) unconditionally upon return to work (e.g., without waiting period or physical examination -- 29 CFR §825.209[e]).
- H. Employees on an FMLA leave become immediately ineligible for employer health premium funding as soon as the employer is informed of an intent not to return from leave, except as required by COBRA (29 CFR §825.209[f]).

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I. Where employee premium contributions exist, those on FMLA leaves shall be required to remit their shares to the employer or the carrier, without any additional charges (29 CFR §825.210[c]).

J. If the employee on FMLA leave is more than 30 days late in paying his/her share of the premium, the employer's obligation to pay its share ceases (29 CFR §825.212[a]).

K. If coverage lapses during a FMLA leave due to the employee's failure to make premium share payments, the coverage must be unconditionally restored upon return to work (29 CFR §825.212[c]).

L. The employer shall recover from the employee who was on FMLA leave the employee's premium share, if the employer made a voluntary payment to avoid a lapse in coverage (29 CFR §825.212[b]).

M. The employer shall recover its premium payments from an employee who fails to return from FMLA leave, unless:

1. the serious health condition persists beyond the time of leave;
2. there are circumstances beyond the employee's control occur (e.g., spouse is transferred to a job location more than 75 miles away; the employee is needed for the health care of an immediate family member; the employee is laid-off while on leave; the employee is a key employee who was given notice not to return at the end of the leave; but not to extend child care leave).

N. Return to work means resumption of duties for at least 30 days (29 CFR §825.213[c]).

IX. ANTI-DISCRIMINATION AND ENFORCEMENT PROVISIONS

A. The employer is prohibited from interfering with or denying an employee the opportunity to exercise rights provided under FMLA (FMLA §105[a]; 29 CFR §220[a]).

B. Protected activities include: filing a charge, instituting a proceeding, furnishing information and testifying (FMLA §105[b]; 29 CFR §825.220[a]).

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C. Discouraging an employee from using FMLA leave constitutes a violation (29 CFR §825.220[b]).

D. Individual rights are not delegable to the collective negotiations process (29 CFR §825.220[d]).

E. The U.S. Secretary of Labor is empowered with investigative authority under the FMLA (FMLA §106[a]).

F. Records must be preserved by employers pursuant to standards set forth in the FLSA at §11(c) (29 USC §211[c]) and are subject to annual submission for inspection, unless reasonable cause warrants more frequent inspection (FMLA §106[b] and [c]).

G. Employees may file complaints administratively with the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor (29 CFR §825.400-401).

X. POSTING AND NOTICE REQUIREMENTS

This employer shall post and maintain conspicuously in places where employees are employed a notice explaining the Act and providing the procedures for filing complaints of violations with the Wage and Hour Division (29 CFR §300[a]). [See Appendix “C” hereto]

XI. EMPLOYER RECORDKEEPING REQUIREMENTS

A. In the form required by §11(c) of the FLSA, the following FMLA relevant information must be retained for at least three (3) years:

1. basic payroll data;
2. FMLA leave dates (all employees) and so designated as such in records;
3. days and hours (where applicable) of FMLA taken by employees;

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4. copies of employee notices of FMLA leave given to the employer; copies of employer notices (both general and specific) given to employees. Copies may be maintained in employee personnel file;
5. documents which describe employee benefits, policies and practice regarding the taking of paid and unpaid leaves;
6. premium payments of employee benefits;
7. written records of disputes about FMLA leave conferral issues (29 CFR §500[a] and [b]).

B. For employees not subject to FLSA recordkeeping requirements (e.g., exempt), the employer need not keep records of actual hours worked if:

1. eligibility for FMLA leave is presumed;
2. intermittent or reduced leave schedule hours are agreed upon between employer and employee (e.g., the parties agree what the regular or average hours of work are) (29 CFR §825.500[d]).

C. Medical certification and recertification documents shall be maintained in separate files/records from the usual personnel files and treated confidentially, except when supervisors and/or safety personnel have a need to know (29 CFR §825.500[e][1] and [2]).

D. Government officials investigating compliance with FMLA must be provided with relevant information upon request (29 CFR §825.500[e][3]).

XII. SPECIAL RULES FOR SCHOOL TEACHING PERSONNEL

A. Whenever primarily instructional employees will miss more than 20% of the working days during the intended FMLA leave for planned treatment of serious health condition (personal or family member), the employer may require:

1. the employee to take leave for periods of a particular duration, but not in excess of the leave period;
2. to transfer temporarily to an alternative position for which the employee is qualified which:
 - a. has equivalent pay and benefits;
 - b. better accommodates recurring periods of leave than the regular employment position (FMLA §108[c][1]; 29 CFR §825.601).

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B. To be eligible for the 20% leave described in paragraph “A”, above, the employee must make a reasonable effort to schedule treatments in a manner which will not unduly disrupt the employer’s operation and, if practicable, give at least 30 days prior notice (FMLA §102[e][2] and §108[c][2]).

C. For leaves near the conclusion of an academic term (semester), the following rules may be applied by the employer in the case of primarily instructional employees:

1. If the leave commences at least five (5) weeks before the end of an academic term and the leave is of at least three (3) weeks duration, leave may be required until the end of the term if the return date would otherwise be within the last three (3) weeks of the term (FMLA §108[d][1]).
2. If a FMLA leave, other than for an employee’s own medical condition, begins within the last five (5) weeks before the end of an academic term, the employer may require the leave to extend through the end of the term if it is for more than two (2) weeks duration and the return date would be within the last two (2) weeks of the term (FMLA §108[d][2]; 29 CFR §825.602).
3. If a FMLA leave, other than for an employee’s own medical condition, begins less than three (3) weeks before the end of an academic term and would last for more than five (5) working days, the employer may require the leave to extend to the end of the term (FMLA §108[d][3]).

D. Periods of one or more weeks when school is closed and employees are not expected to report to work do not count toward FMLA leave. Examples include school closings during the Christmas/New Year holidays, summer vacation, or closings for maintenance and repairs.

However, when a particular holiday falls during a week taken as FMLA leave, the entire week is counted as FMLA leave.

E. Restoration to an equivalent position upon return from leave regarding all school employees is to be governed by school board policy and practices or collectively negotiated provisions (FMLA §108[e]; 29 CFR §825.600[d]).

(Continue)

**SUBJECT: FAMILY AND MEDICAL LEAVE ACT OF 1993 GUIDANCE DOCUMENT
(Con't.)**

F. “Instructional employees” are defined as those whose principal function is to teach and instruct students in class, a small group or individual settings, coaches, special education assistants such as signers for the hearing impaired. It does not include counselors, psychologists, curriculum specialists, non-instructional personnel and teaching assistants or aides, unless their principal job is actually teaching or instructing (29 CFR §825.600[c]).

G. If FMLA leave is extended at the employer’s option, the extension is considered to be FMLA leave time as well, including health benefits and restoration rights (29 CFR §825.603[b]).

Adopted 3/7/11