

Personnel

MOUNT PLEASANT COTTAGE SCHOOL UNION FREE SCHOOL DISTRICT**SUBJECT: FAMILY AND MEDICAL LEAVE ACT**

The Family and Medical Leave Act of 1993 (FMLA) requires public agencies to provide up to twelve (12) weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are "eligible" if they have been employed by the District for at least twelve (12) months and for at least 1,250 hours of service during the previous twelve-month period. Full-time teachers are deemed to meet the 1,250 hour test. However, a break in employment for military service (i.e., call to active duty) should not interrupt the twelve (12) month/1,250 hours of employment requirement and should be counted toward fulfilling this prerequisite. The law covers both full-time and part-time employees.

The District uses A "rolling" twelve (12) month period measured backward from the date of any FMLA leave usage as its method for calculating the leave year period for the commencement of the FMLA leave period. In certain cases, FMLA leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.

The entitlement to leave for the birth or placement of a child shall expire at the end of the twelve (12) month period beginning on the date of such birth or placement.

Definitions Related to FMLA**Spouse**

Spouse means a husband or wife as defined or recognized under state law, including "common law" marriage in states where it is recognized.

Parent

Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents "in law."

(Continued)

Personnel

SUBJECT: FAMILY AND MEDICAL LEAVE ACTSon or daughter

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age eighteen (18), or age eighteen (18) or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.

In Loco Parentis

The FMLA Regulations define in loco parentis as including those with day-to-day responsibilities to care for or financially support a child. Employees who have no biological or legal relationship with a child may, nonetheless, stand in loco parentis to the child and be entitled to FMLA leave. Similarly, an employee may take leave to care for someone who, although having no legal or biological relationship to the employee when the employee was a child, stood in loco parentis to the employee when the employee was a child.

Serious Health Condition

A "serious health condition" is defined as 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 and where the person is required to see the health care provider at least twice with the first visit commencing within seven (7) days of the incapacitating event and the second visit commencing within thirty (30) days of the incapacitating event. A "serious health condition" is also defined as any period of incapacity related to pregnancy or for prenatal care.

Chronic Serious Health Conditions

In order for an employee to claim the need for continuous treatment under FMLA for a chronic serious health condition, the employee must demonstrate that the chronic condition:

- 1) Requires periodic visits [defined as a minimum of two (2) visits per year] to a health care provider;
- 2) Continues over an extended period of time (including reoccurring episodes of a single underlying condition); and
- 3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(Continued)

Personnel

SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)Disability

The definition of "disability" is defined by the Americans with Disabilities Act, as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.

Incapable of Self-Care

To be "incapable of self-care" means that the child (or adult child) needs assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills and maintaining a residence. The list of ADLs and IADLs in the regulations is not exhaustive, and additional activities should also be considered in determining whether an adult son or daughter is incapable of self-care because of a disability.

Reasons for Taking Leave

A District must grant unpaid leave to an eligible employee for one (1) or more of the following reasons:

- 1) The birth of a child and care for the child;
- 2) Adoption of a child and care for the child;
- 3) The placement of a child with the employee from foster care;
- 4) To care for a spouse, minor child or parent/guardian who has a "serious health condition" as defined by the FMLA;
- 5) To care for an adult child who is also incapable of self-care due to a disability (regardless of date of the onset of disability) and has a "serious health condition" as defined by the FMLA; and/or
- 6) A "serious health condition" of the employee, as defined by FMLA, that prevents the employee from performing his/her job.

(Continued)

Personnel

SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)**Military Family Leave Entitlements**Military Caregiver Leave

An eligible employee who is the spouse, son, daughter, parent, or 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:

- 1) Recovering from a service-connected serious illness or injury sustained while on active duty; or
- 2) Recovering from a serious illness or injury that existed prior to the service member's active duty and was aggravated while on active duty; or
- 3) 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:

- 1) 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
- 2) A veteran (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.

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SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)"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, son, daughter, or parent of the employee is serving in the regular Armed Forces or either the National Guard or the Reserves and is on active duty 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 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:

- 1) Short-notice deployment;
- 2) Military events and related activities;
- 3) Childcare and school activities;
- 4) Parental care leave;
- 5) Financial and legal arrangements;
- 6) Counseling;
- 7) Rest and recuperation (for up to fifteen [15] calendar days);
- 8) Post-deployment activities; and
- 9) Any additional activities where the employer and employee agree to the leave.

In any case in which the necessity for leave due to any qualifying exigency is foreseeable, whether because the spouse, or a son, daughter, or parent of the employee is on active duty, or because of notification of an impending call or order to active duty in support of a contingency operation, 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.

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SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)

Upon an employer's request, an employee must provide a copy of the military member's active duty order to support the employee's request for qualifying exigency leave. In addition, the employer may request the following information:

- 1) A statement or description of appropriate facts regarding the exigency that is needed;
- 2) The approximate date on which the exigency commenced or will commence;
- 3) An estimate of the frequency and duration of the exigency if leave is needed on a reduced scheduled basis or intermittently;
- 4) If the exigency requires meeting with a third party, the contact information for the third party and description of the purpose of the meeting;
- 5) Additionally, the certification for qualifying exigency leave for Rest and Recuperation Leave must include a copy of the military member's Rest and Recuperation Leave Orders, or other documentation by the military setting forth the dates of the military member's leave.

Substitution of Paid Leave

At the employee's or District's option, certain kinds of paid leave may be substituted for unpaid leave. The District may require the employee to substitute any accrued paid vacation, personal or family leave if the employee is taking leave to care for another due to birth or serious health condition. The District may also require the employee to substitute any of their accrued paid vacation, personal, or medical/sick leave if they seek leave for their own serious health condition. The District may substitute paid vacation, personal, family and the employee's own medical/sick leave if they seek leave under the Military Caregiver Leave.

Advance Notice and Medical Certification

The employee may be required to provide advance leave notice and medical certification.

- 1) The employee ordinarily must provide thirty (30) days advance notice when the leave is "foreseeable."
- 2) A District may require medical certification to support a request for leave because of a "serious health condition".

(Continued)

Personnel

SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)

- 3) A District may reinstate the medical certification process with the first absence in a new twelve (12) month leave year.
- 4) A District may also require medical certification if the employee is unable to return from leave because of a "serious health condition".
- 5) A District may also require medical certification for an employee returning to work often called the "fitness for duty" certification.

Intermittent or Reduced Leave

- 1) An employee may take intermittent leave or may work a reduced leave schedule to reduce the usual number of hours per day or work week.
- 2) Intermittent or reduced leave schedules are subject to District approval unless medically necessary.

Job and Benefits Protection

- 1) Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

The District may deny restoration to certain highly compensated employees, but only if necessary to avoid substantial and grievous economic injury to the District's operation.
- 2) The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.
- 3) The use of unpaid FMLA leave cannot affect the exempt status of bona fide executive, administrative and professional employees under the Fair Labor Standards Act.

Medical Insurance Coverage

- 1) For the duration of FMLA leave, the District must maintain the employee's medical insurance coverage under any "group health plan," under the conditions coverage would have been provided if the employee had continued working.
- 2) In some cases, the District may recover premiums paid for maintaining an employee's health coverage if the employee fails to return to work from FMLA leave.

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Personnel

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SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)**Special Provisions for School District Employees**

An "instructional employee" is an employee whose principal function is to teach and instruct students in a class, a small group, or an individual setting (e.g., teachers, coaches, driving instructors, special education assistants, etc.). Teaching assistants and aides who do not have instruction as the principal function of their job are not considered an "instructional employee."

Intermittent Leave Taken By Instructional Employees

FMLA leave that is taken at the end of the school year and resumes at the beginning of the next school year is not regarded as intermittent leave but rather continuous leave. The period in the interim (i.e., summer vacation) is not counted against an employee and the employee must continue to receive any benefits that are customarily given over the summer break.

Intermittent leave may be taken but must meet certain criteria. If the instructional employee requesting intermittent leave will be on that leave for more than twenty percent (20%) of the number of working days during the period for which the leave would extend, the following criteria may be required by the employer:

- 1) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- 2) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

Appropriate notice for foreseeable FMLA leave still applies and all employees must be returned to an equivalent position within the School District. Additional certifications, requirements and/or training may not be required of the employee as a contingent of their return to work.

Leave Taken by Instructional Employees Near the End of the Instructional Year

There are also special requirements for instructional employees taking leave and the leaves relation to the end of the term. If the instructional employee is taking leave more than five (5) weeks prior to the end of the term, the District may require that the employee take the leave until the end of the term if the leave lasts more than three (3) weeks and the employee was scheduled to return prior to three (3) weeks before the end of the term.

(Continued)

SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)

If the instructional employee is taking leave less than five (5) weeks prior to the end of the term for any FMLA-related reasons except qualifying exigency, the District may require that the employee remain out for the rest of the term if the leave lasts more than two (2) weeks and the employee would return to work during that two (2) week period at the end of the instructional term.

If the instructional employee begins taking leave during the three (3) weeks prior to the end of the term for any reason except qualifying exigency, the District may require that the employee continue leave until the end of the term if the leave is scheduled to last more than five (5) working days.

Any additional time that is required by the District due to the timing of the end of the school year will not be charged against the employee as FMLA leave because it was the employer who requested that the leave extend until the end of the term.

FMLA Does Not

- 1) Affect any federal or state law prohibiting discrimination;
- 2) Supersede any state or local law which provides greater family or medical leave rights;
- 3) Diminish an employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan, nor may the rights provided under FMLA be diminished by such agreement or plan; nor
- 4) Discourage employers from adopting policies more generous than required by FMLA.

Enforcement

- 1) The Secretary of Labor is authorized to investigate and attempt to resolve complaints of violations, and may bring an action against an employer in any federal or state court of law.
- 2) FMLA's enforcement procedures parallel those of the federal Fair Labor Standards Act. The FMLA will be enforced by the Department's Wage and Hour Division.
- 3) An eligible employee may bring a civil action against an employer for violations.
- 4) Employers who act in good faith and have reasonable grounds to believe their actions did not violate FMLA may have any damages reduced to actual damages at the discretion of a judge.

For more information, please contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration.