

# Regulation GBD-R

## Las Cruces Public Schools

Related Entries: GBD  
Responsible Office: Chief Human Resource Officer

### FAMILY AND MEDICAL LEAVE ACT (FMLA)

#### I. PURPOSE

To implement the policy of the Board of Education that the FMLA provides a means for employees to balance their work and family responsibilities.

#### II. DEFINITIONS AND ELIGIBILITY

1. *“Year,” means* the twelve (12) months period measured forward from the first date an employee takes FMLA leave.
2. *“FMLA” means* Family Medical Leave Act (FMLA), which is a federal law passed in 1993 that entitles eligible employees up to 12 workweeks/60 workdays of job-protected unpaid leave for family and medical reasons during a 12-month period, and up to 26 weeks of protected unpaid leave to care for the employee’s parent, spouse, son or daughter, or next of kin who is a covered service member with a serious injury or illness.
3. *“Eligibility” means* all employees who:
  - a. have worked a minimum of 1,250 hours during the preceding twelve (12) month period, which may or may not be consecutive, but only to the extent required by law, and
  - b. have been employed by the District for at least a twelve (12) month period.
  - c. Full-time Instructional Employees (i.e., classroom teachers) meet the 1,250 hours of service requirement unless the school district can demonstrate that the teacher did not meet the 1,250 hours of service requirement in the 12-month period prior to the start of leave.
4. *“Parent” means* the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.
5. *“Son or daughter” means* a biological adopted, or foster child, a stepchild, a legal ward, or a child or a person standing in loco parentis, who is
  - a. Under 18 years of age; or
  - b. 18 years of age or older and incapable of self-care because of a mental or physical disability.

6. “*Son or daughter of a covered service member*” means a covered service member’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered service member stood in loco parentis, and who is of any age.

7. “*Spouse*” means a person with whom an individual entered into marriage as defined or recognized under State law for purposes of marriage in the State where the marriage occurred, including same-sex, or common law marriage in States where it is recognized.

### **III. PROCESS**

- A. Application for FMLA will be required after the employee has been absent for five consecutive days or whenever an employee knows of the need for FMLA leave or the school district becomes aware that an employee needs leave that potentially qualifies as FMLA leave. All of an employee’s accumulated leave (sick leave, personal leave, paid personal leave and annual leave) whether continuous or intermittent must be exhausted, and then will be unpaid leave, thereafter.
- B. FMLA will be granted to an eligible employee who has identified and substantiated an FMLA qualifying event or condition, for themselves or a covered family member which will require a leave from Las Cruces Public Schools job responsibilities. FMLA is not to exceed 12 workweeks/60 workdays per year (or 26 workweeks as set forth below) as provided for an eligible employee. FMLA may be taken for one or more of the following qualifying events or conditions:
  - a. For incapacity due to pregnancy, prenatal care, or child birth, and to care for the employee’s child after birth (leave must be taken within 12 months after birth);
  - b. For adoption and foster care, and to care for the employee’s child after placement of a child with the employee by adoption or foster care (leave must be taken within 12 months after placement);
  - c. To care for the employee’s spouse, son or daughter, or parent, who has a serious health condition;
  - d. For the employee’s own serious health condition that makes the employee unable to perform one or more essential functions of his or her current position;
  - e. Because of a qualifying exigency arising out of the fact that a spouse, son, daughter or parent is on (or has been notified of an impending call to) covered active duty in the Armed Forces (including of the National Guard or Reserves.)In addition, an eligible employee will be entitled to up to twenty-six (26) weeks of FMLA leave in a single 12-month period (beginning on the first day of leave) to care for the employee’s spouse, parent, son or daughter, or next of kin who is a covered service member with a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating. A covered service member includes (1) a member of the Armed Forces (including a member of the National Guard or Reserves) (a) who is undergoing medical treatment, recuperation, or therapy; (b) is in outpatient status; or (c) is on the temporary disability retired list for a serious injury or illness, and (2) a veteran who is

undergoing medical treatment, recuperation, or therapy for a serious injury or illness who was a member of the Armed Forces at any time during the five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy.

- C. The District will continue to contribute its portion of the appropriate group health insurance coverage in force at the time the leave begins during any paid or non-paid FMLA leave. The employee must make arrangements to pay the required monthly contribution, by check, to the appropriate insurance administrator during any unpaid portion of FMLA leave. If the employee fails to return from leave, the District may recover any premium that the District has paid for maintaining group health insurance coverage during FMLA leave from the employee, unless the employee does not return because of a serious health condition or other circumstances beyond the employee's control.

D. FMLA PROCESS STEPS

- a. **Step 1:** Apply for FMLA electronically via District website at <http://request.efmla.com/request-ind.tpl?A1=33547c32571C179433>
  - b. **Step 2:** You will get an email from [administrator@efmla.com](mailto:administrator@efmla.com). Open the email and click on the blue link “**Start FMLA Leave Request**” and fill out the required form. You will receive the eligibility notice, cover letter, any required medical or other certification via email from [adminstrator@efmla.com](mailto:adminstrator@efmla.com) (This could take up to 5 business days from time of your request) If you are taking FMLA for your own serious health condition, you will also receive the fitness for duty form via email as well.
  - c. **Step 3:** Print the medical certification and fitness for duty form (if you received one) and give to your doctor for completion. (Please be aware that the medical certification is due 15 calendar days from the time you receive it). The same process should be followed for your fitness for duty form (if you are required to submit one).
  - d. **Step 4:** Return the medical certification or other required documentation to HR for review (if your or your family member's health care provider submits the form electronically for you, we will receive a copy by email and you will also receive a copy by email).
  - e. **Step 5:** You will receive a Designation Notice via email within 5 business days notifying you as to whether your FMLA leave has been approved and providing additional information.
  - f. **Step 6:** If you received the fitness for duty form for your own serious health condition, you will need to have this form completed by your doctor and returned to Human Resources prior to returning to work. Human Resources must have the fitness for duty on file before you can return to work.
- E. If intermittent FMLA is requested, the medical statement must also include the dates on which treatment is expected to be given, the duration of treatment, and that such treatment is not available at a time which would not require leave from duty.

- F. The District may, at its expense, request a second opinion as to whether FMLA applies to your leave. A third medical opinion by a doctor, jointly designated by the District and the employee, may be obtained, at the District's expense, if the second opinion conflicts with the first.
- G. When FMLA is requested for an employee's serious health condition, before such leave expires the employee must provide the fitness for duty documentation to the Human Resources Department from the original certifying health care provider certifying that the employee is able to resume work with or without restrictions. An employee on FMLA for a serious health condition who does not provide the District the necessary return-to-work certification prior to the date of their scheduled return may not return to work, must apply for an appropriate leave of absence, resign, or will be subject to termination or discharge, as an employee cannot be absent without leave.
- H. If the FMLA is to care for a newborn child or adopted/foster child, documentation (i.e. legal adoption document) must be provided as required accompany the request for FMLA.
- I. An employee who takes FMLA does not earn service credit toward retirement and does not accumulate other benefits during the period of non-paid leave.
- J. If both spouses are eligible employees of the School District and request leave for the birth of a child, the placement of a healthy child by adoption or for foster care, or to care for a their own parent with a serious health condition, they only will be entitled to a maximum combined total leave equal to twelve (12) weeks in any 12-month entitlement period. If either spouse (or both) uses a portion of the total 12-week entitlement for one such purpose, each is still entitled to the difference between the amount he or she has taken individually and the 12-week entitlement for FMLA leave for other FMLA purposes during any 12-month entitlement period. However, a husband and wife may each take up to twelve (12) weeks of FMLA leave for other FMLA-qualifying reasons, such as for their own serious health condition, or if needed to care for a child with a serious health condition. Both spouses who are eligible for FMLA leave are limited to a combined total of 26 workweeks of leave during the single 12-month period if one of the reasons is to care for a covered service member with a serious illness or injury and also for the birth of a child, the placement of a healthy child by adoption or for foster care, or to care for a parent with a serious health condition.
- K. If the serious health condition of the employee or eligible family member results in the need for leave in excess of a combined total of twelve (12) weeks (concurrent accrued paid leave and FMLA) and sufficient accumulated leave is not available to extend the absence, the employee must request an appropriate leave of absence, return to work, or resign from the District.

- L. Certain restrictions for FMLA apply to requests by an employee employed principally in an instructional capacity.
  - a. If such leave would be for a period of time greater than twenty percent (20%) of the total number of working days in the school year when taken on an intermittent basis, the District may require the employee to take leave for periods of a particular duration or may temporarily transfer the employee to an alternate position for which the employee is qualified and which would better accommodate recurring periods of leave and which has equivalent pay and benefits.
  - b. If such leave would be taken near the conclusion of an academic term and if the eligible employee begins leave more than five (5) weeks prior to the end of an academic term, the District may require the employee to continue taking leave until the end of the academic term if the leave is of at least three (3) weeks duration and the return to employment would occur during the three (3) week period before the end of the term.
  - c. If such leave is for a purpose other than the employee's own serious health condition and would commence less than five (5) weeks prior to the end of the academic term, the District may require the employee to continue taking leave if the leave is greater than two (2) weeks duration and the return to employment would occur during the two- (2) week period before the end of such school term.
  - d. If the leave is for purposes other than the employee's own serious health condition and would commence less than three (3) weeks prior to the end of the academic term and is greater than five (5) working days, the District may require the employee to take leave until the end of the academic term.
- M. Employees returning from FMLA may be restored to the same position or be assigned to an equivalent position with equivalent pay, benefits and working conditions. The District is not obligated to return the employee to the position held by the individual prior to FMLA. Employee must report to HR before returning to previous work site if the leave is taken in one continuous block of time (rather than intermittently or on a reduced schedule) if the leave is for the employee's own serious health condition.
- N. The District may requires an employee on FMLA to report periodically on the employee's leave status and intention to return to work. We will notify you of this requirement in the Eligibility Notice you receive after submitting a request for FMLA leave.
- O. A "key employee" is on whose compensation is within the highest ten percent (10%) of the workforce of the District. The District may deny the restoration of benefits and employment to a "key employee" if:
  - a. The Superintendent or designee determines that such denial is necessary to prevent substantial and grievous economic injury to the District;

- b. The Superintendent or designee notifies the “key employee” in writing or in person at the time the Superintendent determines such injury would occur;
  - c. In any case in which the FMLA has commenced and “the key employee” decided not to return to work after receiving such notice in writing or in person.
- P. An employee on FMLA is not entitled to unemployment compensation benefits during the leave period.
- Q. This regulation is based upon the regulations for the United States Department of Labor's Family and Medical Leave Act of 1993 (FMLA), as amended and recodified in the future. It is not intended to be the complete explanation of the FMLA. An employee may review the regulations by securing a copy of the applicable Code of Federal Regulations, which is available at [www.dol.gov/whd/fmla/applicable\\_laws.htm](http://www.dol.gov/whd/fmla/applicable_laws.htm). The federal regulations will be used as a source to clarify implementation, when necessary, and the decisions made by the appropriate administrator, Human Resources Department, regarding an employee's eligibility for FMLA will be based upon this regulation and the applicable regulations.
- R. An employee on FMLA who fails to return to the assigned position following expiration of the leave, and who does not qualify for additional leave, may be terminated or discharged at the conclusion of the FMLA since failure of an employee to report for duty is cause for termination or dismissal. An employee who fails to return may be liable for all group health insurance premiums paid by the District on behalf of the employee while on FMLA without pay.
- S. Notice Provisions
  - a. An employee must notify the School District of the need for a family or medical leave at least thirty (30) days before the leave is to begin if the need for the leave is foreseeable based upon an expected birth, placement for adoption for foster care, planned medical treatment for the employee's or family member's serious health condition, or the planned medical treatment for a serious injury or illness of a covered service member. If 30 days-notice is not practicable, then the employee must provide notice as soon as practicable under the circumstances, usually the same day or the next business day after the employee becomes aware of the need for FMLA leave. An employee must provide notice as soon as practicable if the foreseeable leave is for a qualifying exigency. The employee must provide enough information to enable to school district to determine if the leave qualifies for FMLA protection, and of the anticipated timing and duration of the leave. When the approximate timing of the need for leave is not foreseeable, an employee must provide notice as practicable under the circumstances. If the need for FMLA leave is for the same reason that the school district has previously designated as FMLA leave, the employee

must either mention the reason for the leave or state that the leave is needed for “FMLA.”

- b. In the case of continuation, recurrence, or onset of a serious health condition of the covered service member being cared for by an employee and the employee is unable to return to work, certification issued by the health care provider of the service member with the serious health condition shall be required to support the inability of the employee to return to work.
- c. All other provisions of the FMLA policy shall apply to the FMLA Service member Family Leave.

#### R. Scheduling Planned Medical Treatment

When planning medical treatment for foreseeable FMLA leave, an employee must consult with his or her supervisor and make a reasonable effort to schedule the treatment so as not to disrupt unduly the School District’s operations, subject to the approval of the health care provider. Ordinarily, the employee should consult with the supervisor prior to scheduling the treatment in order to work out treatment schedule which best suits the needs of the School District and the employee. The School District may, for justifiable cause, require an employee to attempt to reschedule treatment, subject to the approval of the health care provider as to any modification of the treatment schedule.

#### S. Outside Employment and Vacation While on FMLA Leave

An employee who is on FMLA leave for his or her own serious health condition may not engage in employment for any other employer or engage in self-employment while on leave. In addition, an employee on FMLA leave for his or her own serious health condition may not engage in personal travel (e.g., vacation) that involves any activities that incapacitates the employee from working his or her job. If the employee is using paid sick leave that is running concurrently with FMLA leave, the employee must remain in the general vicinity of his or her place of residence during the period of such leave. Dishonesty related to such activities (i.e., work or personal travel) are violations of this policy.



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*Approved, Chief Human Resource Officer*

6/25/19

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*Date Approved*

**History:** Formerly Procedure 310; Revised 06.20.06; Revised 06.20.19

**Legal Reference:** 29 U.S.C. § 2601, *et seq.*; 29 C.F.R. § 825