

## **HEBER ELEMENTARY SCHOOL DISTRICT**

### **I.**

#### **Board Policies Covering All Employees**

##### **Board Policy No. 4016: FAMILY CARE AND MEDICAL LEAVE**

###### **A. Intent Of Policy**

This Policy is intended to comply with the federal Family Medical Leave Act of 1993 as amended, 29 U.S.C. § 2601 *et seq.*, and the California Family Rights Act of 1991 as amended, Cal. Gov't Code § 12945.2. No greater or lesser leave benefits will be granted than those provided by applicable state or federal laws. This Policy shall be interpreted so that there will be no violation of either state or federal law.

###### **B. Family Care And Medical Leave**

Family care and medical leave consists of unpaid leave for a period of up to twelve (12) work weeks in a year (measured forward from the date on which the leave begins and ending 12 months after that date) for one of the following reasons:

1. The birth or placement of a child for adoption or foster care with the employee within one year of such birth or placement;
2. To care for the employee's spouse, domestic partner, child or parent with a serious health condition; or
3. If an employee has a serious health condition that makes the employee unable to perform essential functions of the employee's job.
4. To address a qualifying exigency due to the fact that an eligible employee's spouse, child or parent is a military member on covered active duty or has been notified of an impending call to covered active duty status.

Family Care and Medical leave is separate and distinct from disability leave for pregnant employees. Pregnant employees may be entitled to a pregnancy disability leave in addition to a family care and medical leave. Section L describes in detail the interplay between pregnancy leave and family care and medical leave.

###### **C. Military Caregiver Leave**

Eligible employees who are the spouse, child, parent, or next of kin of a covered service member with a serious injury or illness may take up to twenty-six (26) workweeks of leave during a single 12-month period (beginning on the date the employee begins the leave and ending 12 months after that date) to care for the covered service member.

#### D. Definitions

1. "Accumulated Sick Leave" means days of sick leave the employee earned in previous school years and has not taken, thereby accruing a balance from year to year.
2. "Child" means a biological, adopted, or foster child, a step-child, a legal ward or a child of a person standing in loco parentis who is either under eighteen (18) years old or over eighteen (18) years old and incapable of self-care because of a mental or physical disability.
3. "Covered active duty" for members of the Regular Armed Forces means duty during deployment with the Armed Forces to a foreign country. "Covered active duty" for members of the Reserve components of the Armed Forces (members of the National Guard and Reserves) means duty during deployment with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.
4. "Covered service member" for military caregiver leave means either 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 in outpatient status, or is on the temporary disability retired list, for a serious injury or illness, or a veteran of the Armed Forces (including the National Guard or Reserves) who was discharged within the five-year period before the start of the leave and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of a covered service member.
5. "Deployment to a foreign country" includes deployment to international waters.
6. "Differential Pay Sick Leave" means the right to receive the difference between an employee's regular salary and the amount of money the District pays a substitute.
7. "Employee Benefits" means all benefits which may be provided or made available to employees by the District, including group life insurance, health insurance, disability insurance, sick leave, annual leave, and pensions, regardless of whether such benefits are provided by a practice or written Policy of the District or through an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. section 1002 (3)).
8. "Employment in the same position" means employment in the position which the employee held prior to taking a family care and medical leave.

9. "Employment in an equivalent position" means a position that has the same or similar duties, pay, and employment benefits which can be performed at the same or similar geographic location as the position held prior to the leave.
10. "Group health plan" means any plan provided or contributed to by the District to provide health care (directly or otherwise) to employers, employees, former employees, or the families of such employees or former employees.
11. "Health care provider" means:
  - a. A physician or surgeon, or osteopathic physician or surgeon, duly licensed in the state of California or in another state or jurisdiction, including another country, who directly treats or supervises the treatment of the serious health condition; or
  - b. A duly licensed podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse-midwife, clinical social worker, or physician assistant authorized to diagnose and treat physical or mental health conditions; or
  - c. Any health care provider from whom the District's group health plan will accept a medical certification.
12. "Industrial Accident and Illness" means a work related injury or illness.
13. "Intermittent Leave" means a leave taken in separate blocks of time due to a single illness or injury and may include leave periods from one hour or more to several weeks.
14. "Parent" means a biological, foster, or adoptive parent, a step-parent, a legal guardian or someone who stood in loco parentis to an employee when the employee was a child.

"Pregnancy disability leave" means a leave taken for disability on account of pregnancy, childbirth, or a related medical condition.
15. "Reduced Leave Schedule" means a leave schedule that reduces an employee's usual number of working hours per day or per week.
16. "Serious health condition" means an illness, injury, impairment or physical or mental condition which involves either of the following:
  - a. Inpatient care (overnight stay) in a hospital, hospice, or residential medical care facility; or
  - b. Continuing treatment or continuing supervision by a health care provider.

17. "Sick leave" means days for which an employee is paid but is not required to work because of illness or injury.
18. "Spouse" means a husband or wife according to California law or registered domestic partner.
19. "Domestic partner" means a person in a relationship registered with the Secretary of State.
20. "Continuous service" means any week in which an employee works any part of the week which is counted as a week worked.
21. "Hours worked" does not include time paid but not worked (holidays, paid vacation, unpaid leave or periods of layoff).
22. "Qualifying exigencies" include making alternative child care arrangements for a child of the deployed military member, attending certain military ceremonies and briefings, or making financial or legal arrangements to address the military member's absence.

E. Eligibility For Family Care And Medical Leave

Employees are required to have completed twelve (12) months of service with the District at the time of a request for leave to be eligible for family care and medical leave. The 12 months of service are not required to be consecutive months. Employment periods prior to a break in service of seven years or more need not be counted in determining whether the employee has been employed by the District for at least 12 months, except for a break in service caused by a military service obligation.

Employees are also required to have completed 1,250 hours worked in the twelve months preceding the leave for eligibility. The 1,250 hours include only those hours actually worked; paid leave and unpaid leave time are not included.

For an employee who takes a pregnancy disability leave that is also a FMLA leave, and who then wants to take CFRA "baby bonding" leave immediately after her pregnancy disability/FMLA leave, the 12-month period during which she must have worked 1,250 hours is that period immediately preceding her first day of pregnancy disability/FMLA leave, not the first day of the subsequent CFRA "baby bonding" leave.

F. Right To Family Care And Medical Leave

Subject to the terms and conditions stated in this Policy, an eligible employee shall be granted an unpaid family care and medical leave for up to a total of twelve work weeks in a one year period, and granted up to twenty-six (26) work weeks of unpaid military caregiver in a one year period.

An eligible employee is entitled to a combined total of 26 work weeks of military caregiver leave and leave for any other FMLA-qualifying reason in a single 12-month period, provided that the employee may not take more than 12 work weeks of leave (out of the total 26 weeks of leave) for any other FMLA-qualifying reason during this period. The one year period is measured forward from the date on which an eligible employee's first family leave began and ending 12 months after that date.

If both parents are employees of the District, they may take a maximum combined total of 26 weeks in a single 12 month period for military caregiver leave or a combination of qualifying exigency leave and military caregiver leave. For only qualifying exigency leave, they may take a maximum combined total of 12 weeks.

If both parents are employees of the District, they may take a maximum combined total of 12 weeks of leave for the birth or placement of a child in a single 12 month period.

If a holiday falls within a week taken as Family Care and Medical leave, the week is nevertheless counted as a week of Family Care and Medical leave. If school is out and/or the District is closed while an employee is on Family Care and Medical Leave and the employee would not normally be expected to report for work for one or more weeks during the closure (for example, over the winter break), the period of time that the employee would not normally be expected to report to work does not count against the employee's Family Care and Medical leave entitlement.

A request for family care and medical leave must comply with the applicable notice requirements described below. Appropriate certification as described in Section H is also required.

#### G. Requests For Family Care and Medical Leave

An employee must provide the District at least 30 days advance notice before FMLA leave is to begin if the need for leave is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition, or planned treatment for a serious injury or illness of a covered service member.

If the employee's need for the leave is foreseeable due to planned medical treatment or medical supervision, the employee shall consult with the District regarding the scheduling of the treatment or supervision so as to prevent undue disruption to the operations of the District. Any scheduling of treatment or supervision shall be subject to the approval of the health care provider of the individual with the serious health condition.

If the need for leave was not foreseeable or in cases of a medical emergency, notice must be given as soon as possible.

The employee must advise the District as soon as practicable if the dates of scheduled leave change or are extended, or were initially unknown.

For foreseeable leave due to a qualifying exigency, an employee must provide notice as soon as practicable, regardless of how far in advance such leave is foreseeable.

H. Certification Of Serious Health Condition From Health Care Provider

1. If the employee is requesting the leave to care for a child, parent or spouse with a serious health condition, the District may require certification of the serious medical condition by the individual's health care provider.
  - a. The certification need not identify the serious health condition involved but shall include:
    - (1) the date on which the serious health condition commenced;
    - (2) the probable duration of the condition;
    - (3) an estimate of the time that the health care provider believes the employee needs to care for the individual requiring the care.
    - (4) a statement that the serious health condition warrants the participation of the employee to provide care for the employee's child, parent or spouse.
  - b. If additional leave is requested beyond the period stated in the certification, the District may require the employee to obtain recertification in accordance with the procedures set forth above.
2. If the employee is requesting the leave for his or her own serious medical condition, the District may require certification of the serious medical condition by his or her health care provider.
  - a. The certification need not identify the serious health condition involved but shall include:
    - (1) the date on which the serious health condition commenced;
    - (2) the probable duration of the condition;
    - (3) a statement that, due to the serious health condition, the employee is unable to perform one or more of the essential functions of his or her position.

- b. If additional leave is requested beyond the period stated in the certification, the District may require the employee to obtain recertification in accordance with the procedures set forth above.
- c. If the District has reason to doubt the validity of the certification, the District may require the employee to undergo an examination by a health care provider of the District's choice to obtain a second opinion. If the second opinion differs from the opinion in the original certification, the District may require the employee undergo a third examination conducted by a health care provider jointly selected by the District and the employee. The third opinion shall be binding on the District and the employee. All subsequent opinions obtained after the initial certification shall be at District expense.
- d. Prior to returning to work after an employee has been granted family care and medical leave for his or her own serious medical condition, the District may require the employee to obtain certification from his or her health care provider that the employee is able to resume his or her duties.

I. Right To Reinstatement

- 1. In general, an employee returning from a family care and medical leave shall be assigned to the position he or she occupied prior to the leave, or an equivalent position with equivalent terms and conditions of employment, including employment benefits such as pay, working conditions, privileges, and status. Additionally, an employee's use of family care and medical leave will not result in the loss of any other employment benefit that the employee earned or was entitled to before using the leave.

J. Intermittent Or Reduced Schedule Leave

- 1. Leave taken because of the serious health condition of the employee or the employee's spouse, child or parent, may be taken intermittently or on a reduced schedule leave when medically necessary. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt District operations.
- 2. Leave taken for the birth, adoption, or foster care placement of a child of the employee may also be taken intermittently or on a reduced schedule. The minimum duration for intermittent or reduced schedule leave for the birth, adoption, or foster care placement of a child of the employee shall be two weeks, however, the District shall grant a request for such leave of less than two weeks' duration on at least two occasions.

3. If an employee requests intermittent leave, or a reduced schedule leave, the District may require the employee to transfer temporarily to an available alternative position. The alternative position must be one which the employee is qualified for, which has equivalent pay and benefits, and better accommodates the recurring periods of leave than the employee's regular position.
4. Only the amount of intermittent leave actually taken may be counted toward the 12 weeks of leave to which the employee is entitled.

K. Terms Of Family Care And Medical Leave

1. Leave taken pursuant to this Policy is unpaid leave. However, an eligible employee may elect, or the District may require the employee, to substitute accrued paid sick leave, differential pay sick leave or other paid leave for any part of the twelve week period. Nothing in this Policy shall require the District to provide paid sick leave or paid medical leave in any situation in which the District would not otherwise provide any such paid leave.

In the event the employee elects or is required to use sick leave, the accumulated sick leave shall be used first. After the accumulated sick leave is exhausted, the employee may elect or the District may require the employee, to use any available differential pay sick leave during the period of the family care and medical leave.

Because family care and medical leave is limited to a duration of twelve (12) work weeks, it is unlikely the employee will run out of differential pay sick leave within the duration of the family care and medical leave for a particular individual serious health condition.

2. During the period of family care and medical leave, the District shall maintain coverage under any group health plan (as defined in Section 5000(b) (1) of the Internal Revenue Code of 1986) for a maximum of twelve (12) work weeks. The coverage shall be under the same terms and conditions as if the employee had continued in employment for the duration of the leave. The District may collect the amount of premiums paid by the District from the employee if the employee fails to return from leave after the contemplated time period for a reason other than the continuation, recurrence or onset of a serious health condition or impossibility to return to work.
3. During the period of the family care and medical leave, the employee is entitled to participate in pension and retirement plans (hereinafter, "retirement plans") and supplemental employment benefit plans to the same extent and under the same conditions as would apply to any other unpaid personal leave granted by the District for any reason other than family care and medical necessity.

The District is not required to make plan payments to any retirement plan or to count the leave period for purposes of "time accrued" under any such retirement plan during



the unpaid portion of the leave period. However, during the portion of the leave period wherein the employee has elected or the District has required the employee to utilize accrued vacation or other paid leave, applicable payments will be made to the retirement plan. In addition, accrued vacation or other accrued paid time off shall count towards "time accrued" under the retirement plan in the same manner as if the employee had utilized the paid leave other than for family care and medical leave. Employees are allowed to continue making contributions to their retirement plan, in accordance with the terms of the plan, during the unpaid portion of the leave.

4. The employee shall maintain employee status during the period of the family care and medical leave. The leave shall not constitute a break in service for purposes of seniority and/or longevity.
5. The employee returning from family care and medical leave shall return with no less seniority than the employee had when the leave commenced for purposes of layoff, recall, promotion, job assignment and seniority-related benefits, such as vacation.
6. Other than as set forth in this Policy, the District shall not refuse to hire, discharge, fine, suspend, expel or discriminate in any fashion against any individual on the basis of using family care and medical leave and/or for giving information or testimony regarding the employee's own family care and medical leave, or another employee's family care and medical leave, in any inquiry or proceeding related to family care and medical leave.
7. Leaves Near the End of the Term (Instructional Employees). The District may require an instructional employee to continue taking a requested leave until the end of the school year in any of the following situations:
  - a. If the instructional employee begins a leave of three or more weeks' duration more than five weeks before the end of a term and would subsequently return to work during the last three weeks of the term;
  - b. If the instructional employee, for reasons other than his/her own serious health condition, begins a leave of more than two weeks' duration during the period that begins five weeks before the end of a term and would subsequently return to work during the last two weeks of the term; or
  - c. If the instructional employee, for reasons other than his/her own serious health condition, begins a leave of more than five days' duration during the period that begins three weeks before the end of a term.

L. Effect of Family Care and Medical Leave on Pregnancy Disability Leave

1. Leave Available

An employee disabled by pregnancy is entitled to up to four months of pregnancy disability leave. (Government Code section 12945.) Pregnancy disability leave runs concurrently with family care and medical leave under federal law (FMLA), but not family care and medical leave under California law (CFRA).

Consequently, an eligible employee may take a pregnancy disability leave of up to four (4) months and a subsequent family care and medical leave under CFRA for birth or placement of a child of up to twelve (12) work weeks, for a combination of four (4) months plus twelve (12) weeks (approximately seven (7) months).

In order to be eligible for a combination pregnancy disability/family care and medical leave, pregnant employees must meet the eligibility requirements set forth at Section E above.

## 2. Compensation During Leave

Leave necessitated by pregnancy, miscarriage, childbirth and recovery therefrom shall be treated the same as sick leave. Consequently, an employee shall utilize sick leave and any available differential pay sick leave during the period of the pregnancy disability/family care and medical leave.

The accumulated sick leave shall be used first. After the accumulated leave is exhausted, the employee shall use any available differential pay sick leave. The employee may also elect, or the District may require the employee to utilize any other paid leave during the pregnancy disability/family care medical leave. Nothing in this Policy shall require the District to provide paid sick leave or paid Medical leave in any situation in which the District would not otherwise provide any such paid leave.

## 3. Benefits During Leave

The District shall maintain coverage under any group health plan (as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986) for employees who are eligible for combination pregnancy disability/family care and medical leave for the amount of time the employee utilizes accumulated and differential pay sick leave. In addition, the District shall maintain coverage for a maximum of twelve (12) work weeks of unpaid leave taken pursuant to this Policy. In some instances, the District may recover premiums it paid to maintain health coverage for an employee who fails to return to work following a combination pregnancy disability/family care and medical leave.

Employees on a combination pregnancy disability/family care and medical leave whose paid coverage ceases in accordance with this Policy, may continue their group health insurance coverage through the District in conjunction with federal COBRA guidelines by making monthly payments to the District for the amount of

the relevant premium. Employees should contact their supervisor or the District Office for further information.

4. Reinstatement

In general, employees returning from a combination pregnancy disability/family care and medical leave shall be reinstated pursuant to the reinstatement rights set forth in Section I.

However, if an employee returning from pregnancy disability leave is unable to perform the essential functions of the job because of a physical or mental condition, the District's obligations to that employee may be governed by the Americans with Disabilities Act.

M. Effect of Family Care and Medical Leave on Industrial Accident or Illness Disability Leave

1. Leave Available

Leave taken under any industrial accident or illness disability policy runs concurrently with family care and medical leave under both federal and state law.

2. Benefits During Leave

The District shall maintain coverage under any group health plan (as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986) for employees who are eligible for combination industrial injury or illness disability/family care and medical leave for a maximum of twelve (12) work weeks. In some instances, the District may recover premiums it paid to maintain health coverage for an employee who fails to return to work following a combination industrial injury or illness disability/family care and medical leave.

Employees on a combination industrial injury or illness disability/family care and medical leave whose paid coverage ceases after twelve (12) work weeks, may continue their group health insurance coverage through the District in conjunction with federal COBRA guidelines by making monthly payments to the District for the amount of the relevant premium. Employees should contact their supervisor or the District Office for further information.

3. Reinstatement

In general, employees returning from a combination industrial injury or illness disability/family care and medical leave shall be reinstated pursuant to the reinstatement rights set forth in Section I.

However, if an employee returning from industrial injury or illness disability leave is unable to perform the essential functions of the job because of a physical or mental condition, the District's obligations to that employee may be governed by the Americans with Disabilities Act.

Legal Reference:

Family Medical Leave Act of 1993, 29 U.S.C. sections 2601, 2611- 2654

Code of Federal Regulations, Title 29, section 825

California Family Rights Act of 1991, Government Code sections 12945.1-12945.2

Title 2, C.C.R. sections 7297.0-7297.11.

Government Code section 12945

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