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**School Committee Policy:**

**#410**

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### **Family and Medical Leave Act (FMLA Leave)**

**Eligibility:** To be eligible for FMLA leave, an employee must have worked for Maynard Public Schools for at least 12 months, and the employee must have worked at least 1,250 hours during the 12 month period immediately preceding the date on which the requested leave would begin.

**Purpose of Leave:** Eligible employees may qualify for FMLA leave for any of the following reasons:

1. for incapacity due to pregnancy, prenatal medical care, and/or the birth, adoption, or foster care placement of a son or daughter, and in order to care for that child;
2. to care for the employee's spouse, son, daughter, or parent who has a serious health condition;
3. for the employee's own serious health condition that makes the employee unable to perform his or her job;
4. because of any qualifying exigency arising out the fact that the employee, or the employee's spouse, son, daughter, or parent is on covered active duty or has been called to covered active duty;
5. because the employee is the spouse, son, daughter, parent, or next of kin caring for a covered service member.

#### **Definitions:**

- "Son or daughter" 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 age 18, or who is age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence. "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" or "instrumental activities of

daily living.” A “physical or mental disability” is a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

- “Parent” means a biological, adoptive, step or foster father or mother, or any other individual who stood *in loco parentis* to an employee when the employee was a “son or daughter” as defined above. For purposes of the FMLA Policy, the term does not include parents “in law.”
- “Spouse” means a husband or wife as defined and/or recognized under Massachusetts state law (or the applicable state law for employees who do not reside in Massachusetts).
- A “serious health condition,” (which is more fully defined by applicable FMLA Regulations), means an illness, injury impairment, or physical or mental condition that involves either: (a) an overnight stay in a medical care facility,; or (b) continuing treatment by a health care provider for a condition that prevents the employee from performing the function of the employee’s job, or prevents the qualified family member from participating in school or other daily activities.

“continuing treatment” for purposes of a serious health condition includes any one or more of the following:

- a. A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
  - i. treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care providence, or a provider of health care services under orders of, on or referral by, a health care provider; or
  - ii. 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.
- b. Any period of incapacity due to pregnancy, or for prenatal care.
- c. 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.
- d. 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 the orders of, or on referral by, a health care provider, for: restorative surgery after an accident or injury; or a condition that would likely result in a period of incapacity of more than three consecutive full calendar days

in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

- e. A period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which: requires periodic visits (at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider; continues over an extended period of time (including recurring episodes of a single underlying condition); and may cause episodic rather than continuing period of incapacity.
- A “health care provider” is defined by the FMLA and applicable regulations, and includes doctors of medicine or osteopathy, who is authorized to practice medicine or surgery by the state in which the doctor practices, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (for certain purposes). The term may also include nurse practitioners, nurse-midwives, clinical social workers, and physician assistants performing within the scope of their practice.
- The following definitions apply to Leave Purposes #4 and #5:
  - The term “qualifying exigency” shall have such meaning as the Secretary of Labor shall define in qualifying regulations under the FMLA.
  - “Covered active duty” or “call to active duty status” means a duty under a call or order to active duty under applicable federal law.
  - A “covered servicemember” means 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 otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, or a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.
  - “Next of kin of a covered servicemember” means the nearest blood relative of the covered servicemember other than the covered servicemember’s spouse, parent, son, or daughter in a certain order of priority as set out in the regulations.
  - A “serious injury or illness” in the context of a “covered servicemember” means an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating.

### Timing and Length of Leave:

Except in the case of FMLA leave granted to care for a covered servicemember, an eligible employee is entitled to a maximum of 12 weeks of unpaid FMLA leave during any 12 month period, measured backward from the date the employee uses any FMLA leave.

Where FMLA leave is granted to care for a covered servicemember, an eligible employee will be entitled to a total of 26 weeks of unpaid FMLA leave during any 12 month period, measured backward from the date the employee uses any FMLA leave. FMLA leave for this purpose will only be provided during a single 12-month period.

Note: During the 12-month period in which an employee takes leave to care for a covered servicemember, an eligible employee shall be entitled to a combined total of 26 weeks of leave for all FMLA-qualifying purposes. This provision shall not limit the availability of leave for any other FMLA-qualifying reason.

***Leave provided under the FMLA Policy will run concurrently with any and all available leave under the Massachusetts Maternity Leave Act and Parental Leave Law, or other applicable laws or benefit programs, to the full extent permitted by law.***

Leave taken for the birth, adoption, or foster care placement of a son or daughter, and in order to care for that child, must be completed within 12 months of the child's birth, adoption, or foster care placement.

### Eligible Employees Who are Married to One Another:

(a) Where Maynard Public Schools employs spouses, and each spouse meets the eligibility requirements for FMLA leave in order to take leave, the total length of leave to which both spouses will be entitled during any rolling 12 month period (as described in "Timing and Length of Leave" above) shall be a combined 12 weeks for the following purposes:

- birth, adoption, or foster care placement of a son or daughter, and in order to care for that child; or
- to care for the employee's parent with a serious health condition.

(b) Where Maynard Public Schools employs spouses, and each spouse meets the eligibility requirements for FMLA leave, the total length of leave to which both spouses will be entitled during any rolling 12 month period (as described in "Timing and Length of Leave" above) shall be a combined 26 weeks for the following purposes:

- leave to care for a covered service member with a serious illness or injury; or
- a combination of leave to care for a covered service member with a serious illness or injury sustained in the line of active duty, and leave for any of the purposes set forth in section (a) above. *Note, however, that notwithstanding the provisions of this section, under this FMLA policy, eligible spouses receive a combined 12 weeks of leave for any of the purposes described in section (a) above.*

Designation of Leave: Maynard Public Schools will designate any absence taken for an FMLA-qualifying reason as FMLA leave, and will count such absences against the employee's 12-week or 26-week entitlement, whichever is applicable.

Special Rules for Instructional Employees:

Certain special rules apply to employees of public elementary and secondary schools, specifically "instructional employees," which is defined as those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively, rather than intermittently. The period during summer vacation when the employee would not have been required to report to work is not counted against the employee's FMLA leave entitlement. An "instructional employee" who is 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.

If an "instructional employee" needs intermittent or reduced schedule leave to care for a covered family member with a serious health condition, a covered servicemember, or the employee's own serious health condition, which is foreseeable, and the employee would be on leave for more than 20% of the total number of working days, the employer may require the employee to: (1) take the leave for a period of particular duration, no 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 the leave schedule.

If an "instructional employee" begins leave more than five weeks before the end of a term, the employer may require the employee to continue taking the leave until the end of the term under certain circumstances as laid out in the applicable regulations. Only the leave taken by the employee until they are ready and able to return to work shall be counted against their FMLA leave entitlement.

The determination of how an employee is to be restored to an equivalent position upon return from FMLA leave will be made on the basis of "established school board policies and practices, private school policies and practices, and collective bargaining agreements."

Intermittent or Reduced Work Schedule Leave:

FMLA leave may be taken either on a reduced working schedule basis, or on an intermittent basis when medically necessary.

When an employee seeks FMLA leave due to his/her own serious health condition, the serious health condition of a son, daughter or parent or to care for a covered servicemember with a serious illness or injury, there must be a medical need for leave and it must be such that medical need can be best accommodated through an intermittent or reduced leave schedule. The Medical Certification provided by the employee must establish a medical necessity that such leave be provided on a reduced working schedule or intermittent basis.

Unless otherwise approved by Maynard Public Schools, FMLA leave taken for the birth, adoption or foster care placement of a child, and to care for that child, may not be taken on an intermittent or reduced work schedule basis, and must be taken at one time.

When an employee receives approval to take leave on a reduced work schedule or an intermittent basis for the birth, adoption or foster care placement of a son or daughter, and in order to care for that child, or where an employee takes leave on a reduced work schedule or on an intermittent basis based on planned medical treatment due to his/her own serious health condition, the serious health condition of a son, daughter or parent, or to care for a covered servicemember with a serious illness or injury, Maynard Public Schools may transfer the employee temporarily to an alternative position (with equivalent pay and benefits), if the alternative position would better accommodate the recurring periods of medical leave.

Subject to their medical limitations, employees taking leave on reduced schedule or intermittent basis are expected to consult with the Superintendent of Schools or designee, in an effort to schedule such leave in a manner that will minimize disruption to the operations of Maynard Public Schools.

#### Requests for Leave and Medical Certification:

When the need for FMLA leave is foreseeable, the employee is expected to provide written notice to Maynard Public Schools at least 30 days before the requested leave is to begin. If an employee cannot give the full amount of advance notice, he or she should provide as much notice as practicable under the circumstances.

Where the leave is due to a qualifying exigency arising out the fact that the spouse, or a son, daughter or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces, the employee is expected to provide such notice as is reasonable and practicable under the circumstances.

It is the employee's responsibility to provide Maynard Public Schools with sufficient information to confirm that the requested leave qualifies as FMLA leave under this policy. Employees requesting a leave due to their own serious health condition, or due to a serious health condition affecting a covered family member or covered servicemember are generally required to provide a Medical Certification from a qualified health care professional documenting the need for the leave, and setting forth sufficient medical facts to demonstrate that the medical condition qualifies for leave under the FMLA. Unless extenuating circumstances are present, this Medical Certification must be provided within 15 calendar days of the employer's request for certification, unless not practicable under the particular circumstances. Further Medical Certification or recertification may be required during the leave, depending on the circumstances. In addition, employees on leave may be contacted periodically for updates concerning their

status and their intent to return to work. Employees are expected to respond fully to such requests for updates. Failure of an employee to provide adequate medical certification may result in a denial of FMLA leave.

If Maynard Public Schools has reason to doubt the validity of the medical certification, Maynard Public Schools may require the employee to obtain a second opinion from a health care provider designated by Maynard Public Schools, at Maynard Public Schools' expense. If there is a conflict between the second opinion and the original Medical Certification, Maynard Public Schools may require the employee to obtain a third opinion from a health care provider who is selected jointly by Maynard Public Schools and the employee, and which will be at Maynard Public Schools' expense. This requirement does not apply to the birth or adoption of a child, nor does it apply to leaves by a spouse, son, daughter, parent, or next of kin, caring for a covered servicemember with a serious illness or injury.

#### Employee Status and Benefits While on Leave:

Employees on unpaid FLMA leave do not accrue additional vacation, sick or personal time while they are on leave, nor are they eligible for paid holidays. The employee will not, however, lose any vacation time accrued prior to the commencement of the leave, nor will the employee lose any other benefit rights to the extent that those rights accrued before the leave commenced.

An employee will not be entitled to more favorable employment terms as a result of taking FMLA leave. Thus, the employee will be subject to any pay or benefit reductions or other adverse actions, including layoff, which he or she would have experienced if he or she had not been on leave.

#### Continuation of Group Health Insurance Coverage:

If an employee participates in any of the Town of Maynard's group health insurance plans prior to his or her leave, the Town of Maynard will continue that employee's group health insurance coverage during his or her leave for up to a total of 12 or 26 weeks, provided that the employee continues to pay his or her share of the premium on a timely basis. During any portion of the leave in which the employee is receiving a paycheck (*e.g.*, where the employee is utilizing accrued vacation), the employee's share of the premium will be deducted from that paycheck. During any portion of the leave in which the employee is not receiving a paycheck, the employee must ensure that his or her share of the premium is received by the School's Business Office on the proper due date.

#### Mandatory Coordination of FMLA Leave with Available Paid Leave Time:

FMLA leave is unpaid leave, except to the extent that an employee is otherwise eligible for paid leave including, but not limited to, accrued and unused vacation, sick or personal time. Employees may elect to be paid any available and applicable accrued time off while on leave.

Reinstatement:

An employee returning to work at the completion of an FMLA leave will be reinstated to his/her former position, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment as he/she had prior to the leave.

An employee who takes a FMLA leave due to his or her own serious health condition will be required to obtain and submit a satisfactory fitness for duty medical evaluation from his or her health care provider as a condition of reinstatement.

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Date Approved: 2/26/2015

Earlier Version: 02/09

Cross Reference: Family and Medical Leave Act of 1993 (Pub.L. 103-3; 29 U.S.C. sec. 2601; 29 CFR 825)

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