| **Policy Name: Classified Personnel Family Medical Leave** | **Policy Code: 8.23** |
|---|---|
| | **Date Adopted: R/A 5/19/14** |

**Eligibility**

**The Wynne School District will grant up to twelve (12) weeks of leave in accordance with the Family Medical Leave Act of 1993 (FMLA) to its employees who have been employed by the District for at least twelve (12) months and for 1250 hours of service during the twelve (12) month period immediately preceding the commencement of the leave. The twelve (12) month period of eligibility shall begin on the first duty day of the school year. Leave will be granted for one or more of the following reasons:**

1. **Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;**

2. **Because of the placement of a son or daughter with the employee for adoption or foster care;**

3. **In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition; and**

4. **Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.**

5. **Because of any qualifying exigency (as the U.S. Secretary of Labor shall, by regulation, determine) arising out of 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 in support of a contingency operation.**

**The entitlement to leave for reasons 1 and 2 listed above shall expire at the end of the twelve (12) month period beginning on the date of such birth or placement.**

**If both the husband and wife are employed by the district and entitled to leave as defined above, the District may, as determined by the needs of the District, limit their leave to a combined total of twelve (12) weeks when taken for reasons 1 and 2 listed above or to care for a parent with a serious health condition.**

**Notice by Employees**

**<u>Foreseeable:</u> When the need for leave is foreseeable, the employee must provide the District with at least thirty (30) days advance notice before the leave is to begin. If thirty (30) days is not practicable, such as because of a lack of knowledge of approximately when the leave will be required to begin, notice must be given as soon as practicable. As soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case.**

**When the need for leave is for reasons 3 and 4 listed above, the employee should provide a medical certification from a health care provider supporting the need for leave at the time the notice for leave is given, but must provide certification at least fifteen (15) days prior to the date the leave is to begin.**

**Failure by the employee to give thirty (30) days notice may delay the taking of FMLA leave until at least thirty (30) days after the date the employee provides notice to the District.**

**<u>Unforeseeable</u>: When the approximate timing of the need for leave is not foreseeable, an employee shall provide the District notice of the need for leave as soon as practicable given the facts and circumstances of the particular case. Ordinarily, the employee shall notify the District within two (2) working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. Notice may be provided in person, by telephone, telegraph, fax, or other electronic means.**

**Medical Certification**

**The required medical certification from a licensed, practicing health care provider of the need for FMLA leave for reasons 3 or 4 listed above shall include the date on which the serious health condition began, the probable duration of the condition, and the appropriate medical facts within the knowledge of the health care provider regarding the condition. For reason 4 listed above, the certification must include a statement that the employee is unable to perform the required functions of his/her position.**

**Second Opinion: In any case where the District has reason to doubt the validity of the certification provided, the District may require, at its expense, the employee to obtain the opinion of a second health care provider designated or approved by the employer. If the second opinion differs from the first, the District may require, at its expense, the employee to obtain a third opinion from a health care provider agreed upon by both the District and the employee. The opinion of the third health care provider shall be considered final and be binding upon both the District and the employee.**

**Recertification: The District may request the employee obtain a recertification, at the employees expense, no more often than every thirty (30) days unless one or more of the following circumstances apply;**

**a. The employee requests an extension of leave;**

**b. Circumstances described by the previous certification have changed significantly; and/or**

**c. The District receives information that casts doubt upon the continuing validity of the certification.**

**The employee must provide the recertification in no more than fifteen (15) calendar days after the District's request.**

**No second or third opinion on recertification may be required.**

**Limitations on Leave**

**The twelve (12) month eligibility period will be determined using a twelve (12) month "rolling" calendar. This means the twelve (12) month period prior to the date FMLA leave is to begin will be reviewed to calculate eligible leave time.**

**Concurrent Leave**

**The District requires employees to substitute any applicable accrued leave for any part of the twelve (12) week period of FMLA leave. All FMLA leave is unpaid unless substituted by applicable accrued leave.**

**Working at another Job while Taking FMLA for Personal or Family Serious Medical Condition**

**No employee on FMLA leave for their own serious medical condition may perform work at another, non-district job while on FMLA leave. Except as provided in policy 8.36, employees who do perform work at another, non-district job while on FMLA leave for their own serious medical condition will be subject to discipline, which could include termination or nonrenewal of their contract of employment.**

**No employee on FMLA leave for the serious medical condition of a family member may perform work at another, non-district job while on FMLA leave. Employees who do perform work at another, non-district job while on FMLA leave for the serious medical condition of a family member will be subject to discipline, which could include termination or nonrenewal of their contract of employment.**

**Workers Compensation: FMLA leave may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition.**

**Health Insurance Coverage**

**The District shall maintain coverage under any group health plan for the duration of FMLA leave the employee takes at the level and under the conditions coverage would have been provided if the employee had continued in active employment with the District. The employee remains responsible for any portion of premium payments customarily paid by the employee. When on unpaid FMLA leave, it is the employee's responsibility to submit their portion of the cost of the group health plan coverage to the District' business office on or before it would be made by payroll deduction.**

**If an employee gives unequivocal notice of intent not to return to work, or if the employment relationship would have terminated if the employee had not taken FMLA leave the district's obligation to maintain health benefits ceases.**

**If the employee fails to return from leave after the period of leave to which the employee was entitled has expired, the District may recover the premiums it paid to maintain health care coverage unless:**

**a. The employees fails to return to work due to the continuation, reoccurrence, or onset of a serious health condition that entitles the employee to leave under reasons 3 or 4 listed above; and/or**

**b. Other circumstances exist beyond the employee's control.**

**Circumstances under "a" listed above shall be certified by a licensed, practicing health care provider verifying the employee's inability to return to work.**

**Reporting Requirements During Leave**

**Employees shall inform the District every two weeks during FMLA leave of their current status and intent to return to work.**

**Return to Work**

**<u>Medical Certification</u>: An employee who has taken FMLA leave under reason 4 stated above shall provide the District with certification from a health care provider that the employee is able to resume work.**

**<u>Return to Previous Position</u>: An employee returning from FMLA leave is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An equivalent position must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, and authority. The employee may not be restored to a position requiring additional licensure or certification.**

**<u>Failure to Return to Work</u>: In the event that an employee is unable or fails to return to work, the Superintendent will make a determination at that time regarding the documented need for a severance of the employees contract due to the inability of the employee to fulfill the responsibilities and requirements of their contract.**

**Intermittent Leave**

**The District will honor employee requests for intermittent leave as prescribed by the FMLA and that are in the best interests of the District. A intermittent or reduced leave schedule generally will not be granted for birth or placement of a child.**

**Leave taken by eligible employees near the end of the semester/academic term**

**If the eligible employee begins leave during the period that is of at least three weeks duration and commences 3 weeks prior to the end of the semester/academic term, the district may require the employee to continue taking leave until the end of such term.**

**<u>Military Service as indicated by number 5 of leave eligibility</u>**
**Definitions:**
**Active Duty is duty under a call or order to active duty under a provision of law referred to in 10 USC 101(a)(13)(B).**

**Contingency Operation has the same meaning given such term in 10 USC 101(a)(13).**

**Covered Service Member is a 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.**

**Next of Kin used in respect to an individual, means the nearest blood relative of that individual.**

**Outpatient Status used in respect to a covered service member, means the status of members of the Armed Forces assigned to A) a military medical treatment facility as an outpatient; or B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.**

**Serious injury or illness used in respect to a member of the Armed Forces, including the National Guard or Reserves, means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member unfit to perform the duties of the member's office, grade, rank, or rating.**

**An eligible employee who is the spouse, son, daughter, parent, or next of kin of a COVERED SERVICE MEMBER shall be entitled to a total of 26 weeks of leave during one 12 month period to care for the service member. During the single 12 month period, the eligible employee is entitled to a combined total of 26 weeks of leave to care for the covered service member and for reasons 1 through 5 listed above. Leave taken, which does not include caring for a covered service member, is limited to 12 weeks in a year.**

**If husband and wife are both eligible employees (must be employed by the district for at least 12 months and for 1250 hours of service during the 12 month period), the husband and wife are entitled to a total of 26 weeks of leave during one 12 month period to care for their spouse, son, daughter, parent, or next of kin who is a COVERED SERVICE MEMBER. During the single 12 month period, the eligible husband and wife are entitled to a combined total of 26 weeks of leave to care for a covered service member and for reasons 1 and 2 listed above or to care for a parent with a serious health condition. Leave taken, which does not include caring for a covered service member, is limited to a combined total of 12 weeks in a year when taken for reasons 1 and 2 listed above or to care for a parent with a serious health condition.**

**When the necessity for leave is for reason 5 listed above is foreseeable, whether because the spouse, 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 district as is reasonable and practicable.**

**Eligible employees may take intermittent or reduced schedule leave for scheduled leave due to reasons 3 and 4 listed above or to care for a covered service member if they have made a reasonable effort to schedule the treatment so as not to disrupt unduly the operation of the employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate and provided the employer with not less than 30 days' notice, before the date the leave is to begin of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.**

**Policy**

**The provisions of this policy are intended to be in line with the provisions of the FMLA. If any conflict(s) exist, the Family Medical Leave Act of 1993 shall govern.**

**Legal References:** **29 USC 2601 et seq.**
**29 CFR 825.100 et seq.**