

Policy Executive Summary

First Reading

May 23, 2022

The following revised policy will be presented for a First Reading.

Policy GBN Family Medical Leave Act

Policy GBN is a required policy. The revised policy has been updated to include new categories of family members (grandchildren and domestic partner's grandchildren) included under Maine's Family Medical Leave Law, effective in October 2021. The revised policy also includes federal military caregiver leave which has been added since the policy was last updated. The military family leave provisions of the FMLA Act provides leave for foreign deployment or to care for a serious injury or illness of a servicemember if the servicemember is the spouse or next of kin.

The revised policy simplifies Procedure GBN – R1 and Procedure GBN – R2 by adding current regulations into Policy GBN.

Recommendation

Policy GBN: To accept the first reading of Revised Policy GBN

FAMILY AND MEDICAL LEAVE

Employees are entitled to family and medical leave under the federal Family and Medical Leave Act of 1993 (“FMLA”) or the Maine Family Medical Leave law when they meet all of the eligibility requirements of these laws. This policy sets forth several rules that must be applied uniformly to all employees who may be eligible for family and medical leave. As used in this policy, “family and medical leave” means leave available under both the federal and state laws.

1. The Federal Employee Eligibility Periods

Employees who have been employed for at least 12 months and have worked at least 1,250 hours in the previous 12 months are eligible for FMLA leave under the federal law.

There are two types of eligibility periods under the federal law as described below.

A. 12-Month Period for Birth, Adoption or Foster Care; Serious Health Condition Purposes; Qualifying Exigency

There is a 12-month eligibility period for 12 weeks of FMLA leave taken for the following qualifying purposes:

1. Birth and care of the newborn child of the employee;
2. Placement with the employee of a son or daughter for adoption or foster care;
3. Care for an immediate family member (spouse, child, or parent) with a serious health condition;
4. Medical leave when the employee is unable to work because of a serious health condition; or
5. Qualifying exigency leave for an employee whose spouse, child or parent is a regular member of the Armed Forces on covered active duty deployed to a foreign country or a reserve member of the Armed Forces (including National Guard) on covered active duty deployed to a foreign country under a call or order to active duty in a contingency operation.

The 12-month period used to determine employee eligibility for FMLA for the purposes described above shall be a rolling 12-month period measured backward from the date of any FMLA leave usage.

B. Federal 12-Month Period for Military Caregiver Leave

There is a separate 12-month period for employees eligible for military caregiver leave of up to 26 weeks. Such leave may be taken to care for a spouse, child, parent or next of kin of an eligible service member or veteran with a serious injury or illness. This leave is calculated from the first day that leave is taken for this purpose and does not track the employer’s designated 12-month

FMLA tracking period as described above. Any military caregiver leave that is not taken within the specific 12-month period is forfeited. This leave period may overlap with the usual 12-month leave period designated by the employer and in certain circumstances, this may impact the employee's eligibility to take other types of FMLA leave.

2. Maine Requirements

A. Employee Eligibility

Employees who have been employed for at least 12 consecutive months are eligible for leave under the Maine Family Medical Leave law.

B. Leave Amount and Eligibility

The amount of family and medical leave available to employees under the Maine law is 10 work weeks in any two-year period.

C. Qualifying Purposes

Leave may be used for the following qualifying purposes:

1. Serious health condition of the employee;
2. Serious health condition of the employee's spouse, domestic partner, child (or child of domestic partner), grandchild (or grandchild of domestic partner), parent or sibling;
3. Birth of the employee's child or child of his/her domestic partner;
4. Placement of a child 16 years of age or younger with the employee or the employee's domestic partner for adoption;
5. Donation of an organ for human transplant by the employee;
6. Death or serious health condition of the employee's spouse, domestic partner, parent, sibling or child as a member of the state military forces or United States Armed Forces (including National Guard and Reserves) while on active duty.

3. Notice by Employee

Employees requesting leave shall provide at least 30 days' notice to the Employer whenever the need for such leave is foreseeable. The employee shall provide appropriate medical certification (or other certification appropriate to the particular request) supporting the leave request.

When the Employer has reason to believe that an employee is or will be absent for an FMLA-qualifying purpose, the Employer should request the appropriate information from the employee to determine the employee's eligibility for family and medical leave.

4. Coordination with Other Leave

When leave is taken that qualifies both as FMLA and as permitted leave under any employment contract, collective bargaining agreement or policy, the employee shall use FMLA and the other type of leave concurrently, provided that the employee meets all of the eligibility requirements for each type of leave. Types of leave that shall run concurrently with FMLA include, but are not necessarily limited to: accrued sick leave, vacation and compensatory time, unpaid leave, disability leave, absence for work-related injuries, and any other applicable types of leave.

5. Fitness for Duty Certificate

Before returning to work, employees taking FMLA for their own serious health condition shall submit a certificate from a health care provider indicating that they are able to return to work and perform the essential functions of the position.

Legal Reference: 26 U.S.C. § 2601 et seq.; 29 CFR Part 825
26 MRSA § 843 et seq.

Adopted: July 6, 1998

Revised: June 2022

FAMILY AND MEDICAL LEAVE

The Sanford School District shall comply with all applicable provisions of the federal Family and Medical Leave Act of 1993 (FMLA), the Maine Family Medical Leave Law, and any other School Committee policies and collective bargaining agreements regarding family and medical leave.

The Superintendent is responsible for implementing administrative procedures to comply with this policy

Legal Reference: 26 USC ss 2601 et seq.
 29 CFR PART 825
 26 MRSA ss 843 et seq.

Cross Reference: GBN-R1-Family and Medical Leave Act Administrative Procedure
 GBN-R2-Maine Family Medical Leave Administrative Procedure

Adoption date: July 6, 1998

Effective date: July 6, 1998

SANFORD SCHOOL DEPARTMENT

FAMILY AND MEDICAL LEAVE ACT (FMLA)
ADMINISTRATIVE PROCEDURE

The following administrative procedure covers the main provisions of the federal Family and Medical Leave Act (FMLA). The guidelines in no way attempt to modify the Act, which should always be referred to when questions about implementation arise. The school unit is responsible for analyzing each employee request for leave to determine whether he/she is eligible under the federal and/or state statute. When an employee is eligible for leave under both the federal and state statutes, the applicable law with regard to each benefit shall be the one which provides greater benefit (usually federal FMLA).

I. Eligibility Requirements

To be eligible under the FMLA, employees must work a site where 50 or more employees of the same school board are employed within 75 miles of that work site. An employee must have been employed by the school unit for at least twelve months and have worked at least 1250 hours in the previous twelve-month period. According to the law, teachers employed on a full-time basis are presumed to meet the minimum hours requirement.

Under FMLA, an eligible employee is entitled to receive up to twelve weeks of leave during a twelve-month period for the following reasons:

- A. The birth and care of a child;
- B. The adoption or foster placement of a child with the employee;
- C. To care for a spouse, child or parent with a serious health condition, or
- D. The employee is unable to perform the functions of his/her position because of a serious health condition

II. Administration

- A. If the leave request is due to the employee's serious health condition, the employee is required to provide medical certification stating the date the health condition commenced, the probable duration, the appropriate medical facts concerning the condition, and that the employee cannot perform the functions of his/her job.

If the leave request is due to serious health condition of a family member, the employee is required to provide medical certification stating the date the health condition commenced, the probable duration, the appropriate medical facts concerning the condition, an estimate of the time the employee will be needed to care for the family member.

- B. The twelve-month period in which an employee is entitled to twelve weeks of FMLA shall be the twelve-month period measured forward from the date an individual employee's first leave begins.

- C. An employee must submit an application for leave at least 30 days in advance when the leave is foreseeable, or as soon as practicable if it is not foreseeable.

If an employee fails to provide 30-days' notice of foreseeable leave, the leave may be delayed to start 30 days after notice is given provided that the employee had actual notice of FMLA notification requirements.

- D. Any leave taken for FMLA-qualifying purposes (including leave taken under employment policies, bargaining agreements, or contracts) shall also be applied to an employee's annual FMLA entitlement. When paid leave taken for FMLA-qualifying purposes is exhausted, the balance of FMLA leave shall be unpaid.
- E. Upon an employee's return to work. He/she will be restored to his/her previous position or to an equivalent position with equivalent pay, benefits, conditions and terms of employment.
- F. An employee returning from FMLA leave for his/her own serious health condition is required to submit medical certification that indicates fitness to return to work and ability to perform the functions of the job.
- G. If the employee is unable to return to work because of his/her own serious health condition at the expiration of allowable FMLA leave, the Superintendent/School Committee may consider a request for extension of unpaid leave and benefits on a case-by-case basis. Failure to return to work upon the expiration of FMLA leave may subject the employee to immediate termination unless such an extension is granted.
- H. An employee who is not eligible for federal FMLA leave may be eligible for Maine Family Medical Leave.

Legal Reference: 26 USC ss 2601 ET SEQ.
29 CFR Part 825

Adoption date: July 6, 1998

Effective date: July 6, 1998

SANFORD SCHOOL DEPARTMENT

MAINE FAMILY AND MEDICAL LEAVE ADMINISTRATIVE PROCEDURE

The following administrative procedure covers the main provisions of the Maine Family and Medical Leave Act. The guidelines in no way attempts to modify the Act, which should always be referred to when questions about implementation arise. The school unit is responsible for analyzing each employee request for leave to determine whether he/she is eligible under the federal and/or state statute. When an employee is eligible for leave under both the federal and state statutes, the applicable law with regard to each benefit shall be the one which provides greater benefit (usually federal FMLA).

I. Eligibility Requirements

To be for Maine Family Medical Leave, employees must work a site where 15 or more employees of a school board. An employee must have been employed by the same employer for twelve consecutive months and not taken such leave within the immediately preceding 24-month period, or have used less than 10 weeks of family medical leave

Under the Maine Family Medical Leave Act, an eligible employee is entitled to receive up to ten consecutive weeks of leave during a 24-month period for the following reasons:

- A. The birth of the employee's child;
- B. Placement of a child 16 years of age or less in connection with the adoption of the child by the employee;
- C. To care for a spouse, child or parent with a serious health condition, or
- D. The employee is unable to perform the functions of his/her position because of a serious health condition

Serious health condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility or continuing treatment by a healthcare provider.

II Administration

- A. The school unit may require certification from a physician to verify the amount of leave requested. An employee who in good faith relies on treatment by prayer or spiritual means, in accordance with the tenets and practice of a recognized church or religious denomination may submit certification from an accredited practitioner of those healing methods
- B. An employee requesting leave shall provide at least 30-days' notice of the intended dates upon which the leave will commence and terminate, unless prevented by medical emergency from giving required notice
- C. Any leave taken for Maine Family Medical Leave qualifying purposes, including leave taken under employment policies, bargaining agreements or contracts, shall

- also be considered leave under the Maine Family Medical Leave and shall be applied to an employee's 10-week Maine Family Medical Leave entitlement every 24-month period. When paid leave taken for Maine Family Medical Leave qualifying purposes is exhausted, the balance of Maine Family Medical Leave shall be unpaid
- D. During Maine Family Medical Leave, an employee shall be permitted to continue his/her medical insurance plan, providing the employee remits the applicable monthly premium for which he/she is liable to the Superintendent's Office no later than the first day of the month for which the premium is due.
 - E. Upon an employee's return to work, he/she will be restored to his/her previous position or to a position with equivalent seniority status, benefits, pay, and other conditions and terms of employment.
 - F. An employee taking Maine Family Medical Leave for his/her own serious health condition may be required to submit certification that he/she is fit to return to work and is able to perform the functions of the position.
 - G. If at the end of the allowable leave under Maine Family Medical Leave the employee is unable to return to work because of his/her own serious health condition, the Superintendent and School Committee may consider a request for extension of unpaid leave benefits on a case-by-case basis. Failure to return to work upon the expiration of Maine Family Medical Leave may subject the employee to immediate termination unless such an extension is granted.
 - H. An employee who is eligible for Maine Family Medical Leave may be eligible for federal Family and Medical Leave.

Legal References: 26 MRSA ss 843 et seq.

Adoption Date: July 6, 1998
Revised Date: February 5, 2007