

MSAD #37
FAMILY MEDICAL LEAVE
POLICY

The following administrative procedure covers the main provisions of the federal Family and Medical Leave Act of 1993 (FMLA) or the Maine Family Medical Leave Act. The guidelines in no way attempt to modify the statute 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 the greater benefit (usually federal FMLA).

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 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. (See Section III for additional school employees who are eligible for these federal FMLA benefits.)

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 the 12-month period measured backward from date of use of leave.

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. LEAVE AMOUNT AND ELIGIBILITY

To be eligible for Maine Family Medical Leave, employees must work at a site where there are 15 or more employees of a school board. An employee must have been employed by the same employer for 12 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. Beginning August 8, 2022, school employees who have worked at least 900 hours in the previous 12 months are also eligible for federal FMLA benefits under the same conditions as other employees eligible to receive such benefits.

Under the Maine Family Medical Leave Act, an eligible employee is entitled to up to 10 weeks of leave during a 24-month period

B. QUALIFYING PURPOSES:

1. Serious health condition of the employee;
2. Birth of the employee's child or the employee's domestic partner's child;
3. Placement of a child 16 years of age or less in connection with the adoption of the child by the employee or the employee's domestic partner;
4. Serious health condition of a spouse, domestic partner, child, domestic partner's child, grandchild, domestic partner's grandchild, parent, or sibling;

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 health care provider;

5. The donation of an organ of the employee for a human organ transplant; or
6. The death or serious health condition of the employee's spouse, domestic partner, parent, child, or sibling if the spouse, domestic partner, parent or child as a member of the state military forces, as defined in Title 37-B, section 102 of the Maine Revised Statutes, or of the United States Armed Services, including the national Guard and Reserves, dies or incurs a serious health condition while on active duty.

C. DOMESTIC PARTNER DEFINED

For the purpose of determining eligibility for Maine Family Medical Leave, “domestic partner” means the partner of an employee who:

1. Is a mentally competent adult as is the employee;
2. Has been legally domiciled with the employee for at least 12 months;
3. Is not legally married to or legally separated from another individual;
4. Is the sole partner of the employee and expects to remain so;
5. Is not a sibling of the employee; and
6. Is jointly responsible with the employee for each other’s common welfare as evidenced by joint living arrangements, joint financial arrangements or joint ownership of real or personal property.

D. ADMINISTRATION

1. 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.
2. 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.
3. Any leave taken for Maine Family Medical Leave qualifying purposes, including leave taken under other applicable statutes, employment policies, collective 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. Paid leave shall run concurrently with any FMLA leave the employee is eligible for. Types of leave that shall run concurrently include, but are not necessarily limited to, accrued sick leave, vacation leave, and personal leave. When paid leave taken for Maine Family Medical Leave qualifying purposes is exhausted, the balance of Maine Family Medical Leave shall be unpaid.
4. During Maine Family Medical Leave, an employee shall be permitted to continue his/her medical insurance plan, providing the employee remits the monthly premium to the Superintendent’s Office no later than the first day of the month for which the premium is due. The school unit and employee may negotiate for the school unit to maintain benefits at the school unit’s expense for the duration of the leave.

5. 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.
6. 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.
7. 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 Board may consider a request for extension of unpaid leave and benefits on a case-by-case basis.
8. An employee who is not eligible for Maine Family Medical Leave may be eligible for federal Family and Medical Leave.

D. LEAVE TAKEN INTERMITTENTLY OR ON A REDUCED LEAVE SCHEDULE

Subject to the other requirements of this policy, leave taken intermittently or on a reduced leave schedule (i.e., a leave schedule that reduces the usual number of hours per workweek or hours per workday of an employee may be taken subject to the following:

- A. Leave for birth or placement related to adoption may not be taken intermittently or on a reduced schedule unless agreed to by both employer and employee;
- B. Leave for a serious health condition of the employee or his/her child, domestic partner's child, parent, domestic partner or spouse, or for organ donation by the employee may be taken intermittently or on a reduced leave schedule when medically necessary;
- C. The taking of leave intermittently or on a reduced leave schedule may not result in a reduction in the total amount of Maine Family Medical Leave to which the employee is entitled beyond the amount of leave actually taken;
- D. If an employee requests intermittent leave or leave on a reduced leave schedule for a serious health condition of the employee or his/her child, domestic partner's child, parent, domestic partner, spouse, or sibling, or for organ donation by the employee that is foreseeable based on planned medical treatment, the employer may require the employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that 1) has equivalent pay and benefits, and 2) better accommodates recurring periods of leave than the regular employment position of the employee.

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

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