

SUBJECT: FAMILY AND MEDICAL LEAVE ACT

The Board of Education, in accordance with the Family and Medical Leave Act of 1993 (as amended) (FMLA), gives "eligible" employees of the District the right to take unpaid leave for a period of up to twelve (12) workweeks (or up to 26 weeks of leave to care for a covered military member with a serious injury or illness) in a twelve-month period as determined by the District.

The District uses a "rolling" twelve (12) month period measured backward from the date of any FMLA leave usage as its method for calculating the leave year period for the commencement of the FMLA leave period. In certain cases, FMLA leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.

Employees are "eligible" if they meet the following conditions:

- (a) The employee must have been employed by the District for at least 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Generally, separate period of employment will be counted if the break in service does not exceed 7 years. Separate periods of employment will be counted when the break in service exceeds 7 years if: (1) the break in service was due to National Guard or Reserve military service obligations; or (2) if a written agreement exists stating the District's intention to rehire the employee after the service break. For eligibility purposes, an employee maintained on the payroll for any part of a week will be considered to have been employed by the District for the entire week.
- b) The employee must have actually worked at least 1,250 hours of service during the previous 12-month period. Generally, full-time teachers will meet the 1,250 hour test after a year of service unless the District's records clearly reflect that such employees did not work 1,250 hours during the previous 12 months. Employees returning from National Guard or Reserve military obligation will be credited with the hours of service that they would have performed but for the period of military service in determining whether the employee worked 1250 hours of service.

Qualified employees may be granted leave for one (1) or more of the following reasons:

- (a) The birth of a child and care for the child (until the child reaches the age of 1 year);
- (b) Adoption of a child and care for the child (within 12 months of adoption);

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- (c) The placement of a child with the employee from foster care (within 12 months of placement);
- (d) To care for a spouse, minor child or parent who has a "serious health condition" as defined by the FMLA;
- (e) To care for an adult child who is incapable of self-care due to a disability (regardless of date of the onset of disability) and has a "serious health condition" as defined by the FMLA; and/or
- (f) A "serious health condition" of the employee, as defined by the FMLA, that prevents the employee from performing his/her job.

A "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider that renders the person incapacitated for more than three (3) consecutive calendar days, that also involves:

- (a) Treatment by a health care provider two or more times within the 30 days of the first day of incapacity unless extenuating circumstances exist; or
- (b) Treatment by a health care provider on at least one occasion, with results in a regimen of continuing treatment under the supervision of the health care provider.

A "serious health condition" also includes:

- (a) Any period of incapacity due to pregnancy, or for prenatal care.
- (b) A period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - 1) Requires at least two visits per year for treatment by a health care provider or nurse under the direct supervision of a health care provider;
 - 2) Continues over an extended period of time; and
 - 3) May cause episodic rather than a continuing period of incapacity.
- (c) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective.
- (d) A period of absence to receive multiple treatments for:
 - 1) Restorative surgery after an accident or other injury; or
 - 2) A condition that would likely result in a period of incapacity for more than three consecutive, full calendar days in the absence of medical intervention or treatment.

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Military Caregiver Leave

An eligible employee who is the spouse, son, daughter, parent, or next of kin (defined as the nearest blood relative) is entitled to up to twenty-six (26) weeks of leave in a single twelve (12) month period to care for a "military member" who is:

- (a) Recovering from a service-connected serious illness or injury sustained while on active duty; or
- (b) Recovering from a serious illness or injury that existed prior to the service member's active duty and was aggravated while on active duty; or
- (c) A veteran who has a qualifying injury or illness from service within the last five (5) years and aggravates that illness or injury.

This military caregiver leave is available during a single twelve (12) month period during which an eligible employee is entitled to a combined total of twenty-six (26) weeks of all types of FMLA leave. Military Caregiver Leave may be combined with other forms of FMLA-related leave providing a combined total of twenty-six (26) weeks of possible leave for any single twelve (12) month period; however, the other form of FMLA leave when combined cannot exceed twelve (12) of the twenty-six (26) weeks of combined leave. Military Caregiver Leave has a set "clock" for calculating the twelve (12) month period for when FMLA leave begins and tolling starts at the first day of leave taken.

The term "military member" means:

- (a) A member of the Regular 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
- (b) A veteran (discharged or released under condition other than dishonorable) who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.

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An "eligible" employee is entitled to FMLA leave because of "a qualifying exigency" arising out of circumstances where the spouse, son, daughter, or parent of the employee is serving in the Regular Armed Forces or either the National Guard or the Reserves and is on active duty during a war or national emergency called for by the President of the United States or Congress, or has been notified of an impending call to active duty status, in support of a contingency operation. There is no "qualifying exigency" unless the military member is or is about to be deployed to a foreign country.

A "qualifying exigency" related to families of the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force

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Reserve and Coast Guard Reserve personnel on (or called to) active duty to take FMLA protected leave to manage their affairs is defined as any one of the following reasons:

- (a) Short-notice deployment (*i.e.*, seven or fewer calendar days' notice);
- (b) Attending certain military events and related activities;
- (c) Arranging for alternative childcare and school activities;
- (d) Parental care leave;
- (e) Addressing certain financial and legal arrangements;
- (f) Attending certain counseling sessions;
- (g) To spend time with a covered military member who is on short-term, temporary rest and recuperation leave during the period of deployment (for up to fifteen [15] calendar days);
- (h) Post-deployment activities (such as post-deployment reintegration meetings); and
- (i) Any additional activities where the employer and employee agree to the leave.

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In any case in which the necessity for leave due to a qualifying exigency is foreseeable, the employee shall provide such notice to the employer as is reasonable and practicable. This military-related leave is for up to twelve (12) weeks during a single twelve (12) month period. Leave may be taken intermittently or on a reduced leave schedule.

Implementation/Benefits/Medical Certification

At the Board of Education's or employee's option, certain types of paid leave may be substituted for unpaid leave.

In most instances, an employee has a right to return to the same position or an equivalent position with equivalent pay, benefits and working conditions at the conclusion of the leave.

Generally, employees requesting FMLA leave must provide written notice of the need for leave to the Business Administrator. The District generally has a right to 30 days advance notice from the employee where the need for FMLA leave is foreseeable. If 30 days notice is not practicable, notice must be given

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as soon as possible and practical under the facts and circumstances of the particular case and the employee generally must comply with normal call in procedures. Notice must be given as soon as possible and practical for foreseeable leave due to a qualifying exigency, regardless of how far in advance such leave is foreseeable.

Employees must provide sufficient information for the District to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions; the family member is unable to perform daily activities; the need for hospitalization or continuing treatment by a health care provider; or circumstances supporting the need for military family leave. Calling in "sick", without providing the reasons for the needed leave, will not be considered sufficient notice for FMLA leave under this policy. Employees must also inform the District if the requested leave is for a reason for which FMLA leave was previously taken or certified.

In addition, the District may require an employee to submit certification from a health care provider to substantiate that the leave is due to the "serious health condition" of the employee or the employee's immediate family member. Under no circumstance should the employee's direct supervisor contact any health care provider regarding the employee's condition; all contact in this manner must be made by a health care provider (employed by the employer), a human resource professional, a leave administrator or a management official. If the medical certification requested by the employer is found to be deficient,

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the employer must indicate where the errors are, in writing, and give the employee seven (7) days to provide corrected materials to cure any deficiency prior to any action being taken.

For purposes of confirmation of family relationships, the District may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship, which may include, but is not limited to, a simply statement from the employee, a child's birth certificate, and/or a court document. The first time qualifying exigency leave is requested by an employee, the District may also require the employee to provide a copy of the military member's active duty orders or other relevant documentation issued by the military. Documents submitted for confirmation purposes will be returned to the employee.

Notice of Eligibility and Rights & Responsibilities

Within five (5) business days after the employee has provided notice of the need for FMLA leave, the Business Administrator or his/her designee will complete and provide a completed copy of the Department of Labor's Notice of Eligibility and Rights & Responsibilities form to him/her.

Designation of FMLA Leave

Within five (5) business days after the employee has submitted the appropriate certification form or enough information to determine whether the leave is FMLA-qualifying, the Business Administrator or his/her designee will complete and provide the employee with a written response to the employee's request for FMLA leave, using the Department of Labor's Designation Notice form. A list of the essential functions of the employee's position shall be attached to and provided with the Designation Notice (because the Board will require an employee returning from FMLA leave to provide a fitness-for-duty certificate which addresses his/her ability to perform the essential functions of his/her position).

The District may retroactively designate leave as FMLA leave with appropriate notice to the employee, provided that the retroactive designation does not cause harm/injury to the employee.

Certification

When an employee seeks leave for treatment of his/her serious health condition or the serious health condition of a covered family member, or seeks leave because of a qualifying exigency or to care for a covered military member who is recovering from a serious illness or injury sustained or aggravated in the line of duty on active duty, the Board may require that such leave be supported by proper certification. Certification must be provided using the appropriate Department of Labor Certification form. Recertification may be required in accordance with the Department of Labor's regulations. An employee must provide a completed certification to the Business Administrator within 15 calendar days after it is requested or provide a reasonable explanation for the delay. Failure to comply with certification requirements may result in the denial of FMLA leave.

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The Business Administrator or his/her designee (other than the employee's direct supervisor) may contact the employee's health care provider for purposes of clarification and authentication of a medical certification after the employee has been given the opportunity to cure any deficiencies. A Health Insurance Portability and Accountability Act ("HIPAA") release is required to permit a covered health care provider to discuss health information about the employee.

The District reserves the right to ask for a second opinion if it has reason to doubt the validity of a medical certification. The District will pay to get a certification from a second doctor, which the District will select. If necessary to resolve a conflict between the original certification and the second opinion, the District will require the opinion of a third doctor. The District and the employee will mutually select the third doctor and the District will pay for the opinion. The third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

Fitness-for-Duty Certification.

The District may require that an employee present a certification of fitness to return to work when the absence was caused by his/her own serious health condition. The District may require that the certification specifically address the employee's ability to perform the essential functions of his/her job.

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The District has the right to deny restoration to employment if the employee does not furnish the fitness-for-duty certification.

The Business Administrator or his/her designee (other than the employee's direct supervisor) may contact an employee's health care provider for clarification and authentication of a fitness-for-duty certification if a HIPAA release has been obtained.

The District has the right to require fitness-for-duty certifications once every 30 days from employees returning from intermittent or reduced schedule leave, when there is a reasonable belief that the employee may pose a significant risk to the employee or others.

Leave Taken Intermittently or on a Reduced Leave Schedule.

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Generally

An employee may take FMLA leave intermittently or may work a reduced leave schedule when medically necessary and when such leave is used in connection with the employee's own serious health condition; the serious health condition of the employee's spouse, parent or child; because of a qualifying exigency; or to care for a covered military member who is the employee's spouse, son, daughter, parent, or next of kin, and who is recovering from a serious illness or injury sustained or aggravated in the line of duty on active duty. An employee must make reasonable effort to schedule foreseeable treatments (*i.e.*, planned surgery, chemotherapy treatments, etc.) in a manner which does not unduly disrupt the District's operations.

Where an employee requests intermittent leave or leave on a reduced leave schedule which is foreseeable based on planned medical treatment, the Board of Education may require the employee to transfer temporarily to another position which has equivalent pay and benefits and better accommodates recurring periods of leave.

Special Provisions for Instructional Employees

An instructional employee is an employee whose principal function is to teach and instruct students in a class, a small group, or an individual setting (e.g., teachers, coaches, driving instructors, special education assistants, etc.). Teaching assistants and aides who do not have instruction as the principal function of their job are not considered an "instructional employee."

Intermittent Leave Taken By Instructional Employees

FMLA leave that is taken at the end of the school year and resumes at the beginning of the next school year is not regarded as intermittent leave but rather continuous leave. The period in the interim (*i.e.*, summer vacation) is not counted against an employee and the employee must continue to receive any benefits that are customarily given over the summer break.

Intermittent leave may be taken but must meet certain criteria. If the instructional employee requesting intermittent leave will be on that leave for more than twenty percent (20%) of the number of working days during the period for which the leave would extend, the following criteria may be required by the employer:

- (a) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or

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- (b) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

Appropriate notice for foreseeable FMLA leave still applies and all employees must be returned to an equivalent position within the School District. Where an instructional employee fails to provide the proper notice of the need for such intermittent or reduced schedule leave, the District may either require the employee to take a leave of a particular duration or to transfer temporarily to an alternative position, or delay the taking of the leave until the required notice is given.

Leave Taken by Instructional Employees Near the End of the Instructional Year

There are also special requirements for instructional employees taking leave and the leave's relation to the end of the term.

- 1) **Leave Taken More Than Five Weeks Prior to the End of the Semester.** Where an instructional employee begins FMLA leave more than five weeks before the end of a semester, the District may require the employee to take leave until the end of the semester if the leave will last at least three weeks and the employee would otherwise return during the three-week period before the end of the semester.
- 2) **Leave Taken Less Than Five Weeks Prior to the End of the Semester.** Where an instructional employee begins FMLA leave for any reason except for qualifying exigency during the five-week period before the end of a semester, the District may require the employee to take leave until the end of the semester if the leave will last more than two weeks and the employee would otherwise return to work during the two-week period before the end of the semester.
- 3) **Leave Taken Less Than Three Weeks Prior to the End of the Semester.** Where an instructional employee begins FMLA leave for any reason except for qualifying exigency during the three-week period before the end of a semester and the leave will last more than five working days, the District may require the employee to take leave until the end of the semester.

Any additional time that is required by the employer due to the timing of the end of the school year, will not be charged against the employee as FMLA leave because it was the employer who requested that the leave extend until the end of the term.

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Benefits Protection

An employee on FMLA leave is entitled to have health coverage under any “group health plan” maintained under the same terms and conditions as if he/she had continued to work. Unless the District notifies an employee of other arrangements, whenever an employee is receiving pay from the District during FMLA leave, the District will deduct the employee’s portion of the group health plan premium from his/her paycheck in the same manner as if the employee was actively working. If FMLA leave is unpaid, the employee will be billed biweekly for his/her portion of the payment.

The District reserves the right to drop the coverage of an employee whose premium payment is more than 30 days late. Notice will be mailed to the employee at least 15 days before coverage is to cease advising the employee that coverage will be dropped on a specified date at least 15 days after the date of the letter unless payment is received by that date.

In some cases, the District may recover premiums paid for maintaining an employee’s health coverage if the employee fails to return to work from FMLA leave.

Job Protection

Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. The District may deny restoration to certain highly compensated employees, but only if necessary to avoid substantial and grievous economic injury to the District’s operation.

The use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of an employee’s leave and will not affect the exempt status of bona fide executive, administrative or professional employee under the Fair Labor Standards Act.

Unlawful Acts

The FMLA makes it unlawful for any employer to:

- 1) Interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- 2) Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or related to FMLA.

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Personnel

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FMLA Notice

A notice which explains the FMLA's provisions and provides information concerning the procedures for filing complaints of violations of the FMLA shall be posted in each school building and a notice of an employee's FMLA rights and responsibilities shall be either placed in the employee handbook of the employer or furnished to each new employee upon hire. The employer has five (5) days to supply such notice from the date of hire.

Administration is directed to develop regulations to implement this policy, informing employees of their rights and responsibilities under the FMLA.

Family and Medical Leave Act of 1993 (as amended), Public Law 103-3

National Defense Authorization Act of 2008, Public Law 110-181

10 USC 101(a) (13)

29 USC 1630.1 and 2611-2654

29 CFR Part 825 and Part 1630

42 USC 12102

Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191

45 CFR Parts 160 and 164

NOTE: Refer also to Policy #6552 -- Uniformed Services Employment and Reemployment Rights Act (USERRA)/Military Leaves of Absence

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