

FAMILY AND MEDICAL LEAVE

Pursuant to the provisions of the Family and Medical leave Act (P.L. 103-3), the district hereby adopts the following policy relating to family and medical leave for eligible employees.

BENEFITS

Eligible employees are entitled to a total of twelve (12) weeks of unpaid leave per year (beginning July 1 of each year) for the following five leave situations:

1. the birth and first-year care of a child;
2. the adoption or foster placement of a child;
3. the “serious health condition” of an employee’s spouse, parent, or child;
and
4. the employee’s own “serious health condition.”
5. a “qualifying exigency” as defined by the United States Secretary of Labor, in which the employee’s spouse, son, daughter or parent is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

For purposes of the benefits referred to above, a serious health condition means “an illness, injury, impairment, or physical or mental condition that involves:

1. in-patient care in a hospital, hospice, or residential medical care facility; or
2. continuing treatment by a health care provider that results in a period of incapacity of more than three (3) consecutive full calendar days and involves either:
 - a. two (2) or more treatments in person by a health care provider within 30 days of the first day of incapacity, unless extenuating circumstances exist. The first treatment must take place within 7 days of the first day of incapacity, and health care provider, not the employee/patient, shall determine if the second visit is needed, or
 - b. treatment by a health care provider on at least one occasion followed by a regimen of continuing treatment under the supervision of the health care provider. Over-the-counter medications, bed rest, taking of fluids, exercise, and other activities that can be initiated without a visit to a health

care provider do not constitute continuing treatment. Serious health condition does cover conditions such as asthma and diabetes even if the episode of incapacity does not last more than three (3) days.”

For purposes of the benefits referred to above which pertain to leave for the care of a child, the term “child” shall mean a son or daughter which is either a biological, adopted, or foster child, a step-child, a legal ward, or a child of a person standing in loco parentis, who is:

1. under eighteen (18) years of age; or
2. eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.

SERVICE MEMBER FAMILY LEAVE

Subject to the requirements of this policy and federal law, 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 workweeks of leave during a 12 month period to care for the service member. During the 12 month period described in this paragraph, an eligible employee shall be entitled to a combined total of 26 workweeks of leave for leave under this paragraph, and leave under the section entitled “Benefits”.

DEFINITIONS

1. “Covered Active Duty” means:
 - A. In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
 - B. In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of Title 10.
2. “Covered service member” means:
 - A. 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, or

- B. A veteran 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 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.
- 3. The term “outpatient status,” with respect to a covered service member, means the status of a member 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.
 - 4. The term “next of kin” means, with respect to an individual, the nearest blood relative of that individual.
 - 5. The term “serious injury or illness” in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade rank or rating.

ELIGIBLE EMPLOYEE

To be eligible for leave under this policy and to be considered an eligible employee, an employee must have been employed:

- 1. for at least twelve (12) months (nonconsecutive); and
- 2. for at least 1,250 hours of service within the previous twelve (12) month period. Time paid (i.e., sick leave, vacation leave, etc.) will not be counted in calculating hours of service.

In the case of employees only employed for nine (9) months or one hundred eighty (180) working days out of each twelve (12) month period, this will require that they be

employed for at least 1,250 hours of service during those one hundred eighty (180) working days, or whatever number of working days are actually worked during the twelve (12) month period.

Any eligible employee who is entitled to the leave referred to above shall be entitled to continuation of health benefits and all other insurance benefits, as well as accrual of sick leave and/or other leave benefits during the period of leave, under the same terms and conditions as are provided to the employee prior to taking the leave. Any increase in premiums or deductibles that apply to active employees shall also apply to employees on FMLA leave. Any employee who fails to pay his required share of premium may be dropped from coverage under the group health plan. The district shall provide the employee a notice that coverage will be dropped at least fifteen (15) days before coverage will cease.

Any employee who is eligible for this leave and takes the leave is entitled to an equivalent position with equivalent pay, benefits, and conditions of employment upon return to employment so long as the employee can continue to perform all the essential functions of the position.

This leave is not to be considered as leave in addition to other leave granted to the employee by school district policy for which the employee is otherwise eligible, but is intended only to supplement that leave to the extent it does not otherwise provide for twelve (12) weeks of leave. In other words, to the extent that any eligible employee would be entitled to receive sick leave, maternity leave, or personal leave pursuant to other applicable school district policies, then the eligible employee must use the sick/personal leave benefits granted under other applicable district policies and only in the event that it does not provide the eligible employee with twelve (12) weeks of leave would the employee be able to use the leave granted under this policy. The leave for which the eligible employee may qualify under the provisions of this policy will not exceed twelve (12) weeks inclusive of the leave utilized under other district policies for any of the above described leave situations. (For example, if due to the illness of an employee, an employee desires to take leave for a period up to twelve (12) weeks and the employee has available six (6) weeks of sick leave which could be utilized for this leave, then the employee would be required to use the six (6) weeks of available sick leave and thereafter would qualify for six (6) weeks of unpaid leave pursuant to this policy. If the employee had available up to twelve (12) weeks of personal/sick leave which could be utilized, then this policy would not apply).

LIMIT ON CHILD CARE BENEFIT

The family leave benefit applicable to the birth, adoption, and foster placement for child care ends after (1) the child reaches age one; or (2) twelve months after adoption or placement.

When both spouses are employed by the school district, the combined amount of leave for birth, adoption, and illness of a parent may be limited to a total of twelve (12) weeks. This limitation is not applicable to leave for personal illness and illness of a spouse or child.

PLANNED MEDICAL LEAVE

In the event an eligible employee employed principally in an instructional capacity (teacher or teacher's aide) requests leave due to a serious health condition or to care for someone with a serious health condition, and the employee would be on leave for greater than twenty percent (20%) of the total number of working days in the period during which the leave would extend, the district may require that such employee elect either:

1. to take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment; or
2. to transfer temporarily to an available alternative position offered by the school district 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.

REQUEST FOR LEAVE NEAR THE CONCLUSION OF THE SEMESTER

1. In the case of an employee principally employed in an instructional capacity (teacher or teacher's aide), if the eligible employee begins leave more than five (5) weeks prior to the end of the academic term, the district may require the employee to continue taking leave until the end of such term if:
 - A. the leave is of at least three (3) weeks duration; and
 - B. the return to employment would occur during the three (3) week period before the end of such term.
2. If the eligible employee begins leave, which leave is granted for any of the permissible reasons other than the employee's own serious health condition, and the leave period would commence within the last five (5) weeks prior to the end of a semester, the district may require the employee to continue taking leave until the end of such term if:
 - A. the leave is of greater than two (2) weeks duration; and

- B. the return to employment would occur during the two (2) week period before the end of such term.
3. If the eligible employee requests leave for any reason other than the employee's own serious health condition, which period would commence during the three (3) weeks prior to the end of a semester and the duration of the leave is greater than five (5) working days, the district may require the employee to continue to take leave until the end of such term.
4. Whenever a teacher is required to extend his/her leave as provided for in Sections 1, 2 or 3 above, the "extra" leave required by the district does not count against the employee's twelve (12) work week entitlement.

DUTIES OF EMPLOYEE

In any case in which the reason for leave is due to the necessity of the employee to care for the spouse, son, daughter, or parent of the employee or because of the serious health condition that makes the employee unable to perform the functions of his/her position, the employee:

1. shall make a reasonable effort to schedule the treatment so as not to unduly disrupt the operations of the district, subject to the approval of the health care provider; and
2. shall provide the school district with timely oral or written notice, such notice to be not less than thirty (30) days before the date the leave is to begin, of the employee's intention to take leave under such provision, except that, if the date of the treatment requires the leave to begin in less than thirty (30) days, the employee shall provide such notice as is practicable. "As soon as practicable" means the day the employee learns of the need for the leave or the next business day. If the employee does not give at least 30 days notice, the district may ask for an explanation, and the employee must respond. If an employee fails to give proper notice, the district may delay or deny leave.

In any case in which the necessity for leave under the section entitled "Service Member Family Leave" is foreseeable, whether because the spouse, or a son, daughter, or parent, of the employee is on covered active duty, or because of notification of an impending call or order to covered active duty, the employee shall provide such notice to the employer as is reasonable and practicable.

SCHOOL DISTRICT RESPONSE: ELIGIBILITY NOTICE AND RIGHTS AND RESPONSIBILITY NOTICE

The district shall notify the employee of eligibility within 5 business days of the employee's request or of the district learning that leave may be covered by FMLA, unless there are extenuating circumstances. The notice may be oral or written, and must inform the employee if he or she is eligible. If the employee is not eligible for FMLA leave, the eligibility notice must specify at least one reason why the employee is not eligible.

The district must also give notice to the employees of their rights and responsibilities. The district may use a single form (including U.S. Department of Labor forms) for both the eligibility notice and the rights and responsibility notice.

CERTIFICATION

The district may require that a request for leave to care for a relative with a serious health condition or because of the employee's own serious health condition or a request for service member family leave, be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee or in the case of service member family leave, of the next of kin of an individual, as appropriate. The district must request the certification within 5 business days after the employee requests leave. The district must give the employee at least 15 calendar days to provide the certification. This may be done through the rights and responsibilities notice. It is the employee's responsibility to provide the district with a complete and sufficient certification. The employee shall provide a copy of such certification to the superintendent or his or her designee. The employee shall be responsible for the cost of such certification or re-certification.

If the certification is incomplete or insufficient, the district must notify the employee in writing of what additional information is needed, and must give the employee at least 7 calendar days to cure any deficiency in the certification. A certification is incomplete if an entry is blank, and is insufficient if information is vague, ambiguous or non-responsive. The district may deny FMLA leave if the deficiencies in the certification are not corrected, or there is no resubmitted certification.

The district may contact the health care provider for authentication (i.e. verifying that the health care provider completed and signed the certification) or clarification (i.e. understanding the handwriting or understanding the meaning of a response) but only after giving the employee a chance to clarify. The district superintendent, business manager, human resources manager or leave administrator (but not the employee's direct supervisor) may contact the employee's health care provider.

Certification provided under this section shall be sufficient if it states:

1. the date on which the serious health condition commenced; and
2. the probable duration of the condition; and
3. the appropriate medical facts within the knowledge of the health care provider regarding the condition; and
4. if applicable, a statement that the eligible employee is needed to care for the son, daughter, spouse or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse or parent; and
5. in the case of the employee's own serious health condition, a statement that the employee is unable to perform the functions of the position of the employee; and
6. in the case of certification for intermittent leave or leave on a reduced leave schedule for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment and a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule.

Second Opinion: In any case in which the district has reason to doubt the validity of the certification provided by the employee for leave for medical care or for medical reasons, the district may require, at the expense of the district, that the eligible employee obtain the opinion of a second health care provider designated or approved by the district concerning any information certified under this section for such medical leave.

In any case in which the second opinion described above differs from the opinion in the original certification provided under this section, the district may require, at the expense of the district, that the employee obtain the opinion of a third health care provider designated or approved jointly by the district and the employee. The opinion of the third health care provider shall be considered to be final and shall be binding on the district and the employee.

The district can ask for recertification once every 30 days in connection with the employee's absence. If the original certification indicated that the condition will last more than 30 days, and the leave involves the absence of the employee, the district will not ask for recertification during the period specified in that original certification. The district may ask for recertification every six months, regardless of the period specified in the certification.

DESIGNATION OF LEAVE AS FAMILY MEDICAL LEAVE

Within five business days of when the district has enough information to know whether leave is for an FMLA qualifying reason (e.g. after getting a sufficient medical certification) the district will give written notification to the employee that the leave is designated as family medical leave. The notice must state whether the employee has FMLA time available and whether leave does or does not qualify as FMLA leave. If the employee is out for a FMLA qualifying reason and the district does not learn of the reason until the employee returns, the employee must give notice within two (2) days of his return and the district will give notice of any FMLA designation within two (2) days thereafter. The district may also provisionally designate leave as FMLA qualifying leave while awaiting receipt of medical certification or a second or third medical opinion.

PENALTY FOR FAILURE TO RETURN

The district may recover the premium that the district paid for maintaining coverage for the employee under the district's group health insurance plan during any period of leave under this policy if:

1. the employee fails to return from leave after the period of leave to which the employee is entitled has expired; and
2. the employee fails to return to work for a reason other than (1) the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave either to care for an individual or on account of the employee's own serious health condition, or (2) other circumstances beyond the control of the employee.

NEW POLICY
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