

FAMILY MEDICAL LEAVE

The Family and Medical Leave Act of 1993 (FMLA) guarantees the right of eligible employees to take up to a total of 12 weeks of leave per year, either in one continuous absence or on an intermittent basis, for one or more of the following reasons:

- for the birth and care of the newborn child of an employee;
- for the placement of a child with the employee for adoption or foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;
- to take medical leave when the employee is unable to work because of a serious health condition;
- to take leave for spouse, child, or parent on active duty or call to active duty status in the National Guard or Reserves for qualifying exigencies;
- or to care for a current member of the Armed Forces, including National Guard or Reserves or a member of the Armed Forces, including National Guard or Reserves who is on the temporary disability retired list.

If the employee is entitled to paid personal leave or vacation leave, the employee must use accrued paid leave during the 12-week leave required by law commencing with the beginning of FMLA leave.

Definitions

- A. **Child:** A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence.
- B. **12-month period:** The calendar year commences the first day of the leave and ends upon completion of a full year. It is a calendar year measuring forward. For example, if the leave starts January 1, 2001, the 12-month period is January 1, 2001 through December 31, 2001; if the leave takes place on May 13, 2001, then the 12-month period is May 13, 2001 through May 12, 2002, etc.
- C. **Serious Health Condition:** An illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive, full calendar days, and any subsequent treatment or period of incapacity

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relating to the same condition that also and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment as defined in Sections 825.113 through 825.115 of the Family Medical Leave Act.

D. Health care providers who may provide certification of a serious health condition include:

- doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;
- podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice under State law;
- nurse practitioners, nurse-midwives, and clinical social workers authorized to practice under State law and performing within the scope of their practice as defined under State law;
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
- any health care provider recognized by the employer or the employer's group health plan's benefits manager; and,
- a health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country

Eligible Employees

To be eligible for absence under the FMLA, the employee must have been continuously employed by the district for a 12-month period immediately preceding his/her request for absence and during that 12-month period must have worked at least 1,250 hours. The onset of the leave will commence after three consecutive absences and in accordance with FMLA standards.

Notice

The employee is required to provide the employer with 30-day notice of absence when it can be reasonably foreseen. When the need for leave is not foreseeable, an employee should give notice to the employer of the need for FMLA leave as soon as practicable under the facts and circumstances of the case, and it is expected the employee will give notice to the employer within one or two workdays of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible.

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Leave because of Qualifying Exigency

Eligible employees may take FMLA leave while the employee's spouse, child, or parent (the "covered military member") is on active duty or call to active duty status for one or more of the following qualifying exigencies: short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities or additional activities described in Section 825.126.

Leave to Care for a Covered Service member with a Serious Injury or Illness

Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, a member of the Armed Forces, the National Guard or Reserves, who is on the list temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he/she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.

Certification

Requests for leave due to a serious health condition of the employee or qualified member of employee's family shall be verified by the certification of a qualified health care provider; this certification shall contain the following: *Certification forms are available from the office of the Business Manager*

- The date when the serious health condition began.
- The probable duration of the condition.
- The appropriate medical facts within the knowledge of the health care provider regarding the condition.
- If the leave is due to the employee's serious health condition, the certificate must include a statement that the employee is unable to perform the functions of his or her position.
- If planned medical treatment is the reason for the leave and employee wants intermittent leave or leave on a reduced time schedule, the date when the treatment begins and the estimated duration of the treatment.
- If the leave request is necessitated by a serious medical condition of the employee or the employee's child, spouse or parent, the certificate shall state that there is a medical necessity for the leave and an estimate of how long the leave will be.

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The employee may be required to obtain a second opinion at the employer's cost from a second health care provider of the employer's choice. If the second opinion conflicts with the first opinion, the employer may request a third opinion at the employer's cost. The employer and the employee must jointly agree on the person providing the third opinion. The third opinion is final and binding.

Effect on Pay and Benefits

During the term of *unpaid* Family or Medical Leave, no pay or other benefits shall accrue, with the exception of any group health benefits that were in effect at the time of commencement of such leave or new group health benefits which are provided by the employer during the FMLA leave. Group health insurance shall be continued in force for the duration of family or medical leave and the district shall continue to pay that portion of benefits normally paid by the employer. The employee shall be responsible for payment of any premiums he/she normally pays through payroll deductions. Such payments must be made by mail or in person to reach the Business Office no later than the last working day of the month prior to the next following month of insurance coverage.

During the term of *paid* Family Medical Leave (the period when accrued paid leave is charged against unpaid FMLA leave which begins with the commencement of FMLA leave), employee shall accrue vacation and sick leave. Employee health insurance benefits shall continue to be in effect with or without pay. The district shall continue to pay their portion of benefits normally paid by the employer. The employee shall be responsible for payment of any premiums he/she normally pays through payroll deductions. Such payments must be made by mail or in person to reach the Business Office no later than the last working day of the month prior to the next following month of insurance coverage.

Failure to Provide Certification

Employee may lose eligibility of the Family Medical Leave Act if proper certification is not completed prior to onset of leave or within 15 days of the onset of the serious health condition.

Intermittent or Reduced Schedule Leave for Instructional Staff

Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement. An instructional employee who is on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

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- A. If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the employer may require the employee to choose either to:
1. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
 2. 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.
- B. These rules apply only to a leave involving more than 20 percent of the working days during the period over which the leave extends. For example, if an instructional employee who normally works five days each week needs to take two days of FMLA leave per week over a period of several weeks, the special rules would apply. Employees taking leave which constitutes 20 percent or less of the working days during the leave period would not be subject to transfer to an alternative position. "Periods of a particular duration" means a block or blocks of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed and may include one uninterrupted period of leave.

If an instructional employee does not give required notice of foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the employer may require the employee to take leave of a particular duration or to transfer temporarily to an alternative position. Alternatively, the employer may require the employee to delay the taking of leave until the notice provision is met.

Leave at End of Academic Year

There are also different rules for instructional employees who begin leave more than five weeks before the end of a term, less than five weeks before the end of a term and less than three weeks before the end of a term. Regular rules apply except in circumstances when:

- A. An instructional employee begins leave more than five weeks before the end of a term. The employer may require the employee to continue taking leave until the end of the term if—
1. The leave will last at least three weeks, and
 2. The employee would return to work during the three-week period before the end of the term.

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- B. The employee begins leave during the five-week period before the end of a term because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered service member. The employer may require the employee to continue taking leave until the end of the term if—
1. The leave will last more than two weeks, and
 2. The employee would return to work during the two-week period before the end of the term.
- C. The employee begins leave during the three-week period before the end of a term because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered service member. The employer may require the employee to continue taking leave until the end of the term if the leave will last more than five working days.

For purposes of those provisions, "academic term" means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of FMLA. An example of leave falling within these provisions would be where an employee plans two weeks of leave to care for a family member which will begin three weeks before the end of the term. In that situation, the employer could require the employee to stay out on leave until the end of the term.

Duration of Leave for Instructional Staff

If an employee chooses to take leave for "periods of a particular duration" in case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave. In the case of an employee who is required to take leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. The employer has the option not to require the employee to stay on leave until the end of the school term. Therefore, any additional leave required by the employer to the end of the school term is not counted as FMLA leave; however the employer shall be required to maintain the employee's group health insurance and restore the employee to the same or equivalent job, including other benefits, at the conclusion of the leave.

Return to Work

When an employee is out on FMLA due to a Serious Health condition, employees are required to provide a medical certificate attesting to his/her fitness for duty before being restored to employment. Failure to provide this certificate may delay an employee's return to work.

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Failure to Return to Work

If the employee fails to return to active district employment upon the expiration of the maximum 12 weeks of leave provided under this section, the employee shall be responsible for repayment of any employer-paid health care premiums unless the failure to return is based upon the continuance, recurrence or onset of a serious health condition or other circumstances beyond the employee's control. In such instances, the employee must provide, in a timely manner, a certification by a health care provider attesting to his/her inability to return to active employment.

Effect of Re-employment and Other Rights

Upon expiration of a duly authorized absence under this section, the employee shall be reinstated to the same position held at the time such leave commenced or an equivalent position with the same or an increase in pay, benefits and other terms and conditions of employment. No employee shall be interfered with, discriminated against, disciplined or otherwise restrained from exercising his/her rights under the Family an Medical Leave Act.

Please contact the Business Manager for more information regarding the Family Medical Leave Act. Anything not included and covered by federal or state regulations will be adhered to according to the law.

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