

Personnel - Certified/Non-Certified

Family and Medical Leave

Because many employees require time away from work during their careers for compelling family reasons, the District has established this Family and Medical Leave Policy. In developing this policy, the District considered a number of important factors, including the Federal Family and Medical Leave Act of 1993 (the "FMLA").

PURPOSES OF LEAVE UNDER THE ACT

Family leave, consisting of up to 12 workweeks of unpaid leave during a 12 month period, is available to eligible employees for the birth of a child and to care for such child, for the placement with the employee of a child for adoption or foster care, or to care for the employee's spouse, child or parent with a serious health condition, or because of a serious health condition that makes the employee unable to perform the functions of his/her job.

ELIGIBILITY

Eligible employees are those who have been employed by the District for at least 12 months and have worked at least 1,250 hours in the prior 12-month period.

If the District employs both a husband and wife, the leave that may be taken by the spouses is limited to a combined total of 12 workweeks during a 12-month period if leave is taken for the birth of a child, a child's placement with the employee for adoption or foster care or to care for a parent with a serious health condition. This limitation does not apply to leave taken for any other purposes permitted by the FMLA. The duration of child rearing leave shall be mutually determined by the Superintendent and the employee, taking into consideration the duties of the employee and the educational interests of the school system. Child rearing leave must conclude within 12 months of the birth or placement of the child.

UTILIZATION OF PAID LEAVE

Paid leave must be used before unpaid leave. Paid leave includes, but is not limited to, vacation time, sick leave, personal days, and disability and/or workers' compensation leave. The paid leave will be counted towards leave under the FMLA and will not extend the leave period.

LIMITATIONS THAT APPLY TO INTERMITTENT OR REDUCED LEAVE BY INSTRUCTIONAL EMPLOYEES

Leave may be taken intermittently whenever medically necessary to care for a seriously ill family member or because the employee is seriously ill and unable to work. When such leave is for a planned medical treatment, the employee must try to schedule the treatment so as not to unduly disrupt the District's operations. Where such leave is taken for a period that ends with the school year and begins again the next school year, it is leave taken consecutively rather than intermittently. The period during the summer 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 will 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.

If an eligible instructional employee needs intermittent leave or reduced leave to care for

a family member, or for the employee's own serious health condition, if foreseeable based on planned medical treatment, and the employee is on a leave for more than 20 percent of the total number of working days over the period the leave would extend, the District 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 the equivalent pay and benefits and better accommodates recurring periods of leave than does the employee's regular position.

Employees taking intermittent or reduced 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. "Period of a particular duration" is defined as a block 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. When an employee chooses to take leave for a period of particular duration, the entire period of leave taken will count as FMLA leave.

If an instructional employee does not give required notice to their supervisor of a foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the District may require the employee to take leave of a particular duration, or transfer temporarily to an alternative position, or require the employee to delay the taking of leave until the notice provision is met. "Required notice" means at least thirty (30) days' advance notice if the leave is foreseeable based on an expected birth, placement for adoption or foster care or planned medical treatment for a serious health condition of the employee or of a family member. If 30 days' notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances or a medical emergency, notice must be given as soon as practicable.

LIMITATIONS THAT APPLY TO THE TAKING OF LEAVE BY INSTRUCTIONAL EMPLOYEES NEAR THE END OF AN ACADEMIC TERM

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 or less than three weeks before the end of a term.

More than five weeks - The District 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.

Less than five weeks - If the employee begins leave for a purpose other than his/her own serious health condition during the five-week period before the end of a term, the District 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.

Less than three weeks - If the employee begins leave during the last three weeks of a term for a purpose other than the employee's own serious health condition and the leave will last more than five working days, the District may require the employee to continue taking leave until the end of the term.

For purposes of these provisions, "term" means the school semester, which typically ends near the end of the calendar year and the end of spring each school year.

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.

RESTORATION TO AN EQUIVALENT POSITION

Upon expiration of FMLA leave, the employee will normally be restored to a position with equivalent benefits, pay and other terms and conditions of employment. For example, an employee may not be restored to a position requiring additional licensure or certification.

DEFINITIONS

1. "Member of an employee's family" means a parent, spouse, or child of the employee.
2. A "parent" means either a biological parent or an individual who functions or functioned as a parent (in loco parentis - had day-to-day responsibilities) to an employee when the employee was a child. Parent does not include a parent-in-law.
3. A "son" or "daughter" includes a biological, adopted or foster child, as well as a stepchild, legal ward or others for whom the employee stands in loco parentis, all of whom either are under age 18 or age 18 or older and incapable of self-care due to a mental or physical disability.
4. "Spouse" is determined in accordance with state law and does not include unmarried domestic partners.
5. A "serious health condition" means an illness, injury, impairment or physical or mental condition involving either inpatient care in a hospital, hospice, or residential medical care facility, or any subsequent treatment in connection with such inpatient care; or continuing treatment by a health care provider, including any period of incapacity, i.e., inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom, of more than three calendar days including any subsequent treatment or period of incapacity relating to the same condition, that also involves treatment two or more times by a health care provider or treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. A regimen of continuing treatment that includes the taking of over-the-counter medications or bed rest, drinking fluids, exercise or other similar activities that can be initiated without a visit by a health care provider is not, by itself, sufficient to constitute a regimen of continuing treatment.

Serious health condition includes any period of incapacity due to pregnancy, or for prenatal care. In addition, serious health condition includes any 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 periodic visits for treatment by a health care provider; (2) continues over an extended period of time; and (3) may cause episodic rather than a continuing period of incapacity, e.g., asthma, epilepsy, diabetes. Absences attributable to incapacity under this paragraph qualify for FMLA leave even though the employee or family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than 3 days.

A serious health condition also includes a period of incapacity which is permanent or long term due to a condition for which treatment may not be effective, and which requires the continuing supervision of a health care provider, but which may not require active treatment by a health care provider, e.g., Alzheimer's, a severe stroke, or the terminal stages of a disease. A serious health condition also includes any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider for restorative surgery after an accident or other injury or for a

condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation), severe arthritis (physical therapy), and kidney disease (dialysis).

Treatment of a serious health condition includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

Conditions for which cosmetic treatments are administered are not serious health conditions unless inpatient hospital care is required or unless complications develop.

Ordinarily the common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraines, etc., are examples of conditions that do not meet the definition of a serious health condition.

Substance abuse may be a serious health condition if the conditions described above are met. However, absence because of the employee's abuse of the substance, rather than for treatment, does not qualify for FMLA leave.

6. An "Instructional employee" means an employee whose principal function is to teach and instruct students in a class, a small group or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors and special education assistants, such as signers for the hearing impaired. It does not include teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists or curriculum specialists. It does not include maintenance and custodial workers.

BENEFIT CONTINUATION

Employees on FMLA leave are entitled to have their health benefit coverage continued under any group health plan on the same conditions as active employees. Arrangements for payment of an employee's share of the premiums will be made in advance, in accordance with the applicable collective bargaining agreement or District policy or practice. Employees are provided a 30-day grace period before the coverage can be canceled for nonpayment. Employees may elect not to continue their health coverage during the leave period.

MEDICAL CERTIFICATION

An employee must provide medical certification from a health care provider when an he/she takes FMLA leave to care for the employee's seriously-ill spouse, child or parent, or due to the employee's own serious health condition. When the leave is foreseeable and at least 30 days' notice has been provided, the employee should provide the medical certificate before the leave begins. When this is not possible, the employee must provide the requested certificate within the time frame requested, provided that such time frame allows at least 15 calendar days, unless it is not practicable despite the employee's diligent, good faith efforts. The District may require, at its expense, second and third medical opinions. For pregnancy, chronic or permanent/long-term conditions under the continuing supervision of a health care provider, the District may request recertification no more often than every 30 days, unless the circumstances described by the previous certification have changed significantly or the District receives information that casts doubt upon the employee's stated reason for the absence.

FITNESS FOR DUTY REPORTS

Upon return to work, after a leave occasioned by the employee's own serious health condition, employees may be required to provide a fitness-for-duty certification with regard to the particular health condition that caused the employee's need for FMLA

leave. The certification need only be a simple statement of an employee's ability to return to work.

NOTICE FROM THE EMPLOYEE

Employees must give at least 30 days' advance notice to their supervisor before FMLA leave is to begin if the leave is foreseeable. If 30 days' notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances or a medical emergency, then the employee must give notice as soon as practicable. The employee's failure to provide proper notice can justify the denial of leave until after such notice is provided.

IMPACT OF COLLECTIVE BARGAINING AGREEMENTS

Collective bargaining agreements will not diminish employees' rights under the FMLA.

Legal Reference:

Family and Medical Leave Act of 1993

29 U.S.C. 2601 (et seq.)

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LEDYARD PUBLIC SCHOOLS
Ledyard, Connecticut