



Policy Title & Number	410: Family & Medical Leave Policy
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Date Created:	07/12/2018
Past Policy Revision Date(s):	Reviewed August 2018
Related Policy(ies):	
Policy Type (Operating, Board)	Operating

A. Purpose

This policy provides guidance regarding leaves to district employees in accordance with the Family and Medical Leave Act, parenting leave under state and federal law, master agreements and guidebooks, and district policy.

B. Definitions

- “Covered active duty” means:
 - 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
 - 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 10 U.S.C. § 101(a)(13)(B).

- “Covered servicemember” means:
 - 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
 - a covered 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, and was discharged or released under conditions other than dishonorable, at any time during the period of five years preceding the first date the eligible employee takes FMLA leave to care for the covered veteran.

- “Eligible employee” means an employee who has been employed by the school district for a total of at least 12 months and who has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave. An employee returning from fulfilling his or her Uniformed Services Employment and Reemployment Rights Act (USERRA)- covered service obligation will be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service. In determining whether the employee met the hours of service requirement, and to determine the hours that would have been worked during the period of absence from work due to or necessitated by USERRA-covered service, the employee’s pre-service work schedule can generally be used for calculations. While the 12 months of employment need not be consecutive, employment periods prior to a break in service of seven years or more may not be counted unless the break is occasioned by the employee’s fulfillment of his or her USERRA-covered service obligation or a written agreement, including a collective bargaining agreement, exists concerning the school district’s intention to rehire the employee after the break in service.
- “Military caregiver leave” means leave taken to care for a covered servicemember with a serious injury or illness.
- “Next of kin of a covered servicemember” means the nearest blood relative other than the covered service member’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made and there are multiple family members with the same level of relationship to the covered servicemember, all such family members will be considered the covered service member’s next of kin, and the employee may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual will be deemed to be the covered service member’s only next of kin.
- “Outpatient status” means, with respect to a covered servicemember who is a current member of the Armed Forces, the status of a member of the Armed Forces assigned to:
 - a military medical treatment facility as an outpatient; or
 - a unit established for the purpose of providing command and control of members of the Armed Forces receiving care as outpatients.
- “Qualifying exigency” means a situation where the eligible employee seeks leave for one or more of the following reasons:
 - to address any issues that arise from a short-notice deployment (seven calendar days or less) of a covered military member;
 - to attend military events and related activities of a covered military member;

- to address issues related to childcare and school activities of a covered military member’s child;
 - to address financial and legal arrangements for a covered military member;
 - to attend counseling provided by someone other than a health care provider for oneself, a covered military member, or his/her child;
 - to spend up to 15 calendar days with a covered military member who is on short-term, temporary rest and recuperation leave during a period of deployment;
 - to attend post-deployment activities related to a covered military member;
 - to address parental care needs; and
 - to address other events related to a covered military member that both the employee and school district agree is a qualifying exigency.
- “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.
 - “Spouse” means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one state. This definition includes an individual in a same-sex or common law marriage that either: (1) was entered into in a state that recognizes such marriages; or (2) if entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state.
- “Veteran” has the meaning given in 38 U.S.C. § 101.
 - “Year” is defined as a rolling 12-month period measured backward from the date an employee’s leave is to commence.
 - “Disaster leave” or “short-term disability” is a district-provided leave used for a period of disability when an employee has exhausted his or her basic leave allotment.

C. Policy Statement

General Statement of Policy:

The following procedures and policies regarding family and medical leave are adopted by the district, pursuant to the requirements of the Family and Medical Leave Act of 1993 (“FMLA”) and consistent with parenting leave under state law.

This policy may be revised at any time without notice. All revisions supersede prior policy and are effective immediately upon approval by the Director.

Associated Procedures or Other Information

Leave Entitlement under Federal and State Law

Twelve-week Leave under Federal Law:

- Eligible employees are entitled to a total of 12 work weeks of unpaid family or medical leave during the applicable 12-month period as defined below, plus any additional leave, as required by law. Leave may be taken for one or more of the following reasons in accordance with applicable law:
 - birth of the employee's child and to care for such child;
 - placement of an adopted or foster child with the employee;
 - to care for the employee's spouse, son, daughter, or parent with a serious health condition;
 - the employee's serious health condition makes the employee unable to perform the functions of the employee's job; and/or
 - any qualifying exigency (as defined by the FMLA) arising from the employee's spouse, son, daughter, or parent being on covered active duty (as defined by the FMLA), or notified of an impending call or order to covered active duty in the Armed Forces.
- An employee's entitlement to FMLA leave for the birth, adoption, or foster care of a child expires at the end of the 12-month period beginning on the date of the birth or placement.
- A "serious health condition" typically requires either inpatient care or continuing treatment by or under the supervision of a health care provider, as defined by applicable law. Family and medical leave generally is not intended to cover short-term conditions for which treatment and recovery are very brief.
- A "serious injury or illness," in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means:
 - injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and
 - in the case of a covered veteran 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 years preceding the date on which the veteran undergoes the medical treatment, recuperation, or therapy, means a qualifying injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty in the Armed Forces and that manifested itself before or after the member became a veteran, and is:
 - a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the

servicemember unable to perform the duties of the service member's office, grade, rank, or rating; or

- a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability (VASRD) rating of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or
 - a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or
 - an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.
- Eligible spouses employed by the school district are limited to an aggregate of 12 weeks of leave during any 12-month period for the birth, care of or adoption of a child; the placement of a child for foster care; or to care for a parent. This limitation for spouses employed by the district does not apply to leave taken by one spouse to care for the other spouse who is seriously ill, to care for a child with a serious health condition, or because of the employee's own serious health condition; or pursuant to Paragraph IV. A. 1.e. above.
 - Depending on the type of leave, intermittent or reduced schedule leave may be granted at the discretion of the district or when medically necessary. Part-time employees are eligible for a pro-rata portion of leave to be used on an intermittent or reduced schedule basis, based on their average hours worked per week. Where an intermittent or reduced schedule leave is foreseeable based on planned medical treatment, the district may transfer the employee temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position, and which has equivalent pay and benefits.
 - If an employee requests a leave for the serious health condition of the employee or the employee's spouse, child or parent, the employee will be required to submit sufficient medical certification. In such a case, the employee must submit the medical certification within 15 days from the date of the request or as soon as practicable under the circumstances.
 - If the district has reason to doubt the validity of a health care provider's certification, it may require a second opinion at the district's expense. If the opinions of the first and second health care providers differ, the district may require certification from a third health care provider at the district's expense. An employee may also be required to present a certification from a health care provider indicating that the employee is able to return to work.
 - Requests for leave must be made to the district. When leave relates to an employee's spouse, son, daughter, parent, or covered service member being on covered active duty, or notified of an impending call or order to covered active duty in accordance with section IV.A.1.e above, and such leave is foreseeable, the employee must provide reasonable and practical notice to the district of the need for leave. For all other leaves, employees must give 30 days' written notice of a leave of absence where practicable. The failure to provide the required notice may result in a delay of the requested leave. Employees are expected to make a reasonable effort to schedule

leaves resulting from planned medical treatment so as not to disrupt unduly the operations of the district, subject to and in coordination with the health care provider.

- The district may require that a request for leave for military-related reasons under section IV.A.1.e above be supported by a copy of the covered military member's active duty orders or other documentation issued by the military indicating active duty or a call to active duty status and the dates of active duty service. In addition, the district may require the employee to provide sufficient certification supporting the qualifying exigency for which leave is requested.
- During the period of a leave permitted under this policy, which does not exceed a total of 12 work weeks in the applicable 12-month period, the district will provide health insurance under its group health plan under the same conditions coverage would have been provided had the employee not taken the leave. The employee will be responsible for payment of the employee contribution to continue group health insurance coverage during the leave. An employee's failure to make necessary and timely contributions may result in termination of coverage. An employee who does not return to work after FMLA leave may, in some situations, be required to reimburse the district for the cost of health insurance premiums paid by the district.
- The district may request or require the employee to substitute accrued paid leave for any part of the 12-week period. Employees may be allowed to substitute paid leave for unpaid leave.
- Employees returning from a leave permitted under this policy are eligible for reinstatement in the same or an equivalent position as provided by law. However, the employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave by meeting the requirements set out in the administrative directives and guidelines established for the implementation of this policy, if any. Employees eligible for leave must comply with the family and medical leave directives and guidelines prior to starting leave. The superintendent, or designee, will be responsible to develop directives and guidelines as necessary to implement this policy. Such directives and guidelines will be submitted to the school board for annual review. The school district will comply with written notice requirements as set forth in federal regulations.

Twelve-Week Leave under State Law: An employee who does not qualify for parenting leave under Paragraphs IV.A.1.a. or IV.A.1.b. above may qualify for a 12-week unpaid leave which is available to a biological or adoptive parent in conjunction with the birth or adoption of a child, or to a female employee for prenatal care or incapacity due to pregnancy, childbirth, or related health conditions. The length of the leave will be determined by the employee but must not exceed 12 weeks unless agreed by the employer. The employee may qualify if he or she has worked for the school district for at least 12 months and has worked an average number of hours per week equal to one-half of the full time equivalent during the 12-month period immediately preceding the leave. This leave is separate and exclusive of the family and medical leave described in the preceding paragraphs but may be reduced by any period of paid parental, disability, personal, or medical, or sick leave, or accrued vacation provided by the employer so that the total leave does not exceed 12 weeks, unless agreed by the employer, or leave taken for the same purpose under the FMLA. The leave taken under this section will begin at a time requested by the employee. An employee who plans to take leave under this section must give the employer reasonable notice of the date the leave will commence and the estimated duration of the leave. For leave taken by a biological or adoptive parent in conjunction with the birth or adoption of a child, the leave must begin within 12 months of the birth or adoption; except that, in the case where the child

must remain in the hospital longer than the mother, the leave must begin within 12 months after the child leaves the hospital.

Twenty-Six Week Leave to Care for Covered Military Service Member

- An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member is entitled to a total of 26 work weeks of leave during a 12-month period to care for the service member. The leave described in this paragraph is only available during a single 12-month period. For purposes of this leave, the need to care for a service member includes both physical and psychological care.
- During a single 12-month period, an employee will be entitled to a combined total of 26 work weeks of leave within the above stated requirements.
- The 12-month period referred to in this section begins on the first day the eligible employee takes leave to care for a covered servicemember and ends 12 months after that date.
- Eligible spouses employed by the school district are limited to an aggregate of 26 weeks of leave during any 12-month period if leave is taken for birth of the employee's child or to care for the child after birth; for placement of a child with the employee for adoption or foster care or to care for the child after placement; to care for the employee's parent with a serious health condition; or to care for a covered servicemember with a serious injury or illness.
- The district may request or require the employee to substitute accrued paid leave for any part of the 26-week period. Employees may be allowed to substitute paid leave for unpaid leave. Employees eligible for leave must comply with the family and medical leave directives and guidelines prior to starting leave. 6. An employee will be required to submit sufficient medical certification issued by the health care provider of the covered service member and other information in support of requested leave and eligibility for such leave under this section within 15 days from the date of the request or as soon as practicable under the circumstances.
- The provisions above will apply to leaves under this section. V. Special Rules for Instructional Employees for FMLA leaves
 - An instructional employee is one whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This includes, but is not limited to, teachers, coaches, driver's education instructors, and special education assistants.
 - Instructional employees who request foreseeable medically necessary intermittent or reduced work schedule leave greater than twenty percent of the work days in the leave period may be required to:
 - take leave for the entire period or periods of the planned medical treatment; or
 - move to an available alternative position for which the employee is qualified, and which provides equivalent pay and benefits, but not necessarily equivalent duties.
 - Instructional employees who request continuous leave near the end of a semester may be required to extend the leave through the end of the semester. The number of weeks remaining before the end of a semester does not include scheduled school breaks, such as summer, winter, or spring break.
 - If an instructional employee begins leave for any purpose more than five weeks before the end of a semester and it is likely the leave will last at least three weeks, the district may require that the leave be continued until the end of the semester.

- If the employee begins leave for a purpose other than the employee’s own serious health condition during the last five weeks of a semester, the district may require that the leave be continued until the end of the semester if the leave will last more than two weeks or if the employee’s return from leave would occur during the last two weeks of the semester.
- If the employee begins leave for a purpose other than the employee’s own serious health condition during the last three weeks of the semester and the leave will last more than five working days, district may require the employee to continue taking leave until the end of the semester.
- The entire period of leave taken under the special rules for instructional employees will be counted as leave. The district will continue to fulfill the district’s leave responsibilities and obligations, including the obligation to continue the employee’s health insurance and other benefits, if an instructional employee’s leave entitlement ends before the involuntary leave period expires.

Other Provisions under FMLA

- The provisions of this policy are intended to comply with applicable law, including the FMLA and applicable regulations. Any terms used from the FMLA will have the same meaning as defined by the FMLA and applicable regulations. To the extent that this policy is ambiguous or contradicts applicable law, the language of the applicable law will prevail.
- Any requirements stated in the collective bargaining agreement between employees in collective bargaining units and the district regarding family and medical leaves will be followed.
- The school district complies with written notice requirements as set forth in any applicable state or federal law.

School District-Provided Short-term and Long Term Disability (Disaster) Leaves

When a qualified employee, as determined by the applicable master agreement or guidebook, has exhausted his or her basic leave allotment, the school district may provide that employee the opportunity to use disaster leave or short-term or long-term disability leave (“disaster leave”). See the Business Manager for additional information and forms.

E. Associated Forms/References

Legal References:

- 10 U.S.C. § 101 et seq. (Armed Forces General Military Law)
- 29 U.S.C. § 2601 et seq. (Family and Medical Leave Act)
- 38 U.S.C. § 101 (Definitions)
- 29 C.F.R. Part 825 (Family and Medical Leave Act)
- Minn. Stat. §§ 181.940-181.944 (Parenting Leave)

Cross References:

- Policy 515 (Protection and Privacy of Student Records)

