

410 Family and Medical Leave Policy

I Purpose

The purpose of this policy is to provide for family and medical leave to school district employees in accordance with the Family Medical Leave Act of 1993 (FMLA) and the updated Department of Labor rules that add leave entitlements to family members of service personnel enacted on January 16, 2009. Employees may also have rights under the Minnesota Parental Leave Statute.

II General Statement of Policy

The following procedures and guidelines will be used in implementing the Family and Medical Leave Act and consistent with requirements of the Minnesota Parental Leave Statute.

III Definitions

FMLA Leave: A “FMLA leave” is a leave governed by this policy, and includes family care leaves, military caregiver leaves, qualifying exigency leaves and medical care leaves.

Family Care Leave: A “family care leave” is a leave for reason of (a) the birth of a son or daughter of the employee; (b) the placement of a son or daughter with an employee in connection with the adoption or state approved foster care of the son or daughter by the employee; or (c) the serious health condition of a son or daughter, parent, or spouse. Eligible employees will be able to take up to 12 weeks of FMLA leave in a 12-month period (measured forward from the first date any FMLA leave is used) for family care leave. An employee entitlement to a leave for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

Military Caregiver Leave: A “military caregiver leave” is a leave to care for a “covered service member” with a “serious illness or injury” incurred in the line of active duty. Eligible employees who are family members (spouse, son, daughter, parent or next of kin) of covered service members will be able to take up to 26 weeks of FMLA leave in a 12-month period (measured forward from the first date leave is used for this purpose) for military caregiver leave.

Qualifying Exigency Leave: A “qualifying exigency leave” is a leave for any qualifying urgent situation due to the fact that a covered family member is on active duty or called to active duty status in support of contingency operation. Eligible employees with a spouse, son, daughter or parent serving in the Nation Guard or Reserves may be able to take up to 12 weeks of FMLA leave in a 12-month period (measured forward from the first date any FMLA leave is used) for qualifying exigency leave.

Son or Daughter: For purpose of this policy, “son or daughter” means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either (a) under 18 years old; or (b) a dependent adult (child 18 years old; or (b) a dependent adult (child 18 years of age or older but incapable of self-care because of a mental or physical disability).

Parent: “Parent” means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or an individual who stood in loco parentis to the employee. Parent does not include a parent-in-law or grandparent.

Spouse: “Spouse” means husband or wife as defined or recognized under state law for purposes of marriage.

Next of Kin: “Next of Kin” means the nearest blood relative other than the covered service member’s spouse, parent, son or daughter, in the following order of priority: 1) Blood relatives granted legal custody of the service member; 2) Brothers and Sisters; 3) Grandparents 4) Aunts and Uncles; 5) First Cousins; unless the service member specifically Designated in writing another blood relative as his/her nearest blood relative.

Serious Health Condition: “Serious health condition” means an illness, injury, impairment or physical or mental condition that involves either (1) an overnight stay in a medical care facility or (ii) continuing treatment by a health care provider for a condition that prevents the employee from performing the functions of the employee’s job or a family member from participating in work, school or other daily activities. Generally, a condition involves continuing treatment if there is (i) a period of incapacity of more than 3 consecutive calendar days combined with at least 2 visits to a health care provider or 1 visit and a regimen of continuing treatment; (ii) incapacity due to pregnancy or parental care; (iii)

incapacity, or treatment of incapacity, due to certain chronic conditions; (iv) incapacity that is permanent or long-term due to a condition for which treatment may not be effective, provided the individual is under the supervision of a health care provider; and (v) multiple treatments by a health care provider for restorative surgery or a condition that would likely result in a period of incapacity of more than 3 consecutive days in the absence of medical intervention or treatment.

Medical Care Leave: A “medical care leave” is a leave taken when the employee is unable to perform the essential functions of the employee’s job because of a serious health condition, and the leave is supported by a health care provider’s statement. Eligible employees may be able to take up to 12 weeks of FMLA leave in a 12-month period (measured forward from the first date any FMLA leave is used) for medical care leave.

Qualifying Exigency: A “qualifying exigency”: includes 1) a short-term deployment; 2) military events and related activities; 3) childcare and school activities; 4) financial and legal arrangements; 5) counseling; 6) rest and recuperation; 7) post-deployment activities; and 8) additional activities that arise out of the active duty or call to active duty when the employer and employee agree to the leave.

Health Care Provider: “Health care provider” is defined as:

A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices. Others capable of providing health care services, as prescribed by statute, include; but are not limited to:

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.

Nurse practitioners, nurses-midwives, clinical social workers, and physician assistants who are authorized to practice under state law and are performing within the scope of their practice.

Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts.

Covered Service Member: A “covered service member” is a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the

National Guard or the Reserves who is on the temporary disability retired list, who:

Is the employee's spouse, son, daughter, or parent or is an individual for whom the employee is next of kin;

Has a serious illness or injury incurred in the line of duty, and;

Is undergoing medical treatment, recuperation or therapy for such serious illness or injury, is in outpatient status or is on the temporary disability retired list.

Serious Illness or Injury: A "serious illness or injury" means an illness or injury that may render the covered service member medially unfit to perform is/her duties.

a. Substitution of Other Paid Leave

The Family and Medical Leave Act provides for unpaid leave time. The School District requires the employee to substitute and run concurrently accumulated earned leave, (i.e. vacation, sick leave, comp time, floating holiday) for the FMLA leave in any situation where the employee would normally be allowed to use the earned leave.

Minnesota law allows for unpaid parental leave of up to six weeks and for use of paid sick leave to care for dependent family members under certain circumstances. These leaves remain available under FMLA but do not extend the maximum FMLA leave for which the employee is eligible.

b. Eligibility

An employee must meet the following requirements to be eligible for FMLA leave:

- 1) The employee must have worked for the District for at least 12 months; and
- 2) The employee must have worked at least 1,250 hours during the 12 months immediately preceding the request.

c. Length of Leave

Except for military caregiver leave, the maximum length of FMLA leave shall be 12 weeks per applicable 12-month period.

In the case of military caregiver leave, the maximum length of FMLA leave shall be 26 weeks per applicable 12-month period but that requirement is per service member and per injury or illness (so an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered service members or to care for the same service member with a subsequent serious injury or illness). The 26-week maximum is a combined total for any type of FMLA leave. For example, an employee may, during the applicable 12-month period, take 16 weeks of FMLA leave to care for a covered service member with a serious illness or injury and 10 weeks of FMLA leave following the birth of a child. However, the employee could not take more than 12 weeks of FMLA leave due to the birth of a child during the applicable 12-month period, even if the employee takes fewer than 14 weeks of FMLA leave to care for a covered service member.

d. Intermittent or Reduced Schedule Leave

An employee is eligible for intermittent or reduced scheduled FMLA leave under any of the following conditions:
When Medically Necessary: An employee may take leave intermittently (a few days at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, because of a serious health condition of the employee, or to care for a covered service member with a serious illness or injury when “medically necessary”.
“Medically necessary” means there must be a medical need for the leave and the leave can best be accomplished through an intermittent or reduced leave schedule. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, the employee must make a reasonable effort to schedule the treatment in a manner that does not unduly disrupt the District’s operations.

For a Qualifying Exigency: An employee may take leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule for any qualifying exigency.

For Birth or Placement for Adoption or Foster Care: An employee may take FMLA leave intermittently or on a reduced leave schedule for birth or placement for adoption or foster care of a child only with the supervisor(s) and department head's consent.

Special Conditions for Regular Part-time Employees:

For regular part-time employees, the FMLA leave entitlement is calculated on a prorated basis by comparing the reduced schedule with the employee's normal schedule. For example, if an employee who would otherwise work 30 hours per week takes 10 hours of intermittent or reduced schedule leave during a week, the employee's 10 hours of leave would constitute one third (1/3) of a week of FMLA leave for each week the employee works the reduced schedule.

The employee requesting intermittent or reduced leave may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates recurring periods of leave when the leave is planned based on scheduled medical treatment. When the leave ends, the employee will be reinstated in the same or an equivalent job as the job the employee left when the intermittent or reduced schedule leave began.

e. Status of Employee Benefits During Leave of Absence

Employees who are granted an approved FMLA leave may continue their group health plan coverages, including dental insurance, by arranging to pay their portion of the premium contributions during the period of unpaid FMLA leave.

Employees on unpaid FMLA leave must immediately contact Payroll to make arrangements to continue to make the employee's share of premium payments and maintain the health benefits while on unpaid leave. Payroll procedures will be followed regarding late payment and if payment is not made, the District may terminate coverage back to the date the unpaid premium was initially due.

Employees who are granted an approved FMLA leave may choose not to continue their group health plan coverages, including dental insurance during the period of unpaid FMLA leave. In that case, upon the employee's return from leave, the employee is entitled to be reinstated in the health plans on making application for reinstatement in the health care plan based on the eligibility rules of the insurance carrier.

Employees who are substituting and running eligible earned leave (i.e. vacation, sick leave, comp time, floating holiday) concurrently with the FMLA leave will continue their group health plan coverages, including dental insurance, in the same manner as if working.

- If an employee elects not to return to work upon completion of an approved unpaid FMLA leave, the District may recover from the employee the District's share of any premiums paid to maintain the employee's coverage, unless the failure to return to work was for reasons beyond the employee's control, i.e.
- The continuation, recurrent, or onset of a serious health condition that entitles the employee to the leave to care for a child, parent or spouse with a serious health condition; or if the employee is unable to perform the essential functions of the position due to his/her own serious health condition; or
- Other conditions beyond the employee's control that prevent the employee from returning to work as determined by the District.
- Benefits other than group health plan coverage will continue to be in force only if employees pay the full amount of the premium during the leave. If such benefits are not continued, upon the employee's return from leave, the employee is entitled to be reinstated in such plans on the same terms as prior to taking the FMLA leave.

- Earned leave benefits (i.e. sick leave, vacation, etc.) will not accumulate during any unpaid FMLA leave. Earned leave benefits will accumulate as per normal payroll practices and Collective Bargaining Agreement provisions during paid FMLA leave where earned leave benefits are run concurrently with the FMLA Leave.
- If an employee needs less than a full week of FMLA leave and a holiday falls within that partial week, the holiday cannot be counted against the employee's FMLA leave if the employee would not otherwise have been required to report for work that day. District recognized holidays which fall during full weeks of FMLA leave will be counted as FMLA leave. To be paid for a holiday during FMLA leave, the employee must be using earned leave concurrently with the FMLA leave as per normal payroll practices and Collective Bargaining Agreement provisions. Questions related to PERA retirement benefits resulting from an FMLA leave should be directed to PERA.

f. Employee Responsibilities – Notification and Reporting Requirements.

Employees must provide sufficient information for the District to determine if a leave may qualify for FMLA protection. An eligible employee must ordinarily provide the District with 30 days advance notice when the FMLA leave is foreseeable (except in case of qualifying exigency leave). If 30 days advance notice is not possible, the employee will be required to give the District notice as soon as practicable which shall normally be within 2 business days after the employee learns of the need for the leave. The District reserves the right to deny a leave request absent timely advance notice. The employee must attempt to schedule foreseeable FMLA leave so as not to unduly disrupt the District's operations.

When leave is needed for a qualifying exigency--whether foreseeable or not--, an employee should provide as much notice as is practicable.

g. Certification of Need for Leave

1. The District will require medical certification from a health care provider or the employee may provide the data to support a request for medical care leave or for family care leave to care for a seriously ill child, spouse or parent.

For medical care leave, the certification must state that the employee is unable to perform the essential functions of the employee's position because of a serious health condition, the date of onset and the health care provider's appropriate medical facts concerning the condition. Chronic illnesses which may have individual episodes of incapacity that are not more than 3 days are also included and would be considered as intermittent leave time. Appropriate medical facts are those facts which are directly relevant to these factors and do not include medical information which involves matters irrelevant to the leave.

For family care leave to care for a seriously ill child, spouse or parent, the certification must state that the employee is needed to provide care for a family member and an estimate of the amount of time needed, including health care provider's statement if there is a need of an intermittent or reduced work schedule.

At its discretion, the District may require a second medical opinion at its own expense. If the first and second medical opinions differ, the District, at its own expense, may require the opinion of a third health care provider. If the employee unreasonably, in the opinion of the District, refuses to agree on a third health care provider, the District may designate the provider. This third opinion is binding on the District and the employee for purpose of the FMLA policy.

The District reserves the right to require the employee to provide re-certification of the need for the leave every 30 days unless circumstances described by the previous certification is more than 30 days, the District will not request recertification until that minimum time has passed unless circumstances change or the District has reason to

doubt the employee's stated reason for leave or the employee requests and extension of leave.

2. If military caregiver leave is needed, the District will require a medical certification by the United States Department of Defense ("DOD") health care provider or a health care provider who is either:
 - 1) A United States Department of Veterans Affairs ("VA") health care provider; 2) a DOD Tricare network authorized private health care provider; or 3) a DOD non-network Tricare authorized private Health care provider.
3. If qualifying exigency leave is needed, the District will require certification and written documentation confirming a covered military member's active duty or call to active duty status in support of a contingency operation.
4. If a certification is required, the employee must provide it within 30 calendar days of the District's Request unless it is not practicable to do so despite the employee's diligent, good faith efforts. The certification must be complete and sufficient. If a certificate is not complete or sufficient, the District will notify the employee of the additional information necessary to make it complete and sufficient and give the employee a period of time (at least seven calendar days) to cure any such deficiency. If a complete and sufficient certification is not provided in a timely manner, the District may deny the taking of FMLA leave or may declare a preliminary designation of FMLA leave until the requisite information from the employee or health care provider is received to determine whether the leave is FMLA qualified or not.

The District may contact a health care provider who has provided a medical certification for purposes of clarifying and/or authenticating a certification in accordance with the procedures provided in the FMLA. The District may also verify in support of a request for a qualifying exigency leave.

h. Supervisor and/or Payroll Responsibilities

Notification and Reporting Requirements: In all circumstances, it is the District's responsibility to designate leave, paid or unpaid, FMLA qualifying, and to give notice of the designation to the employee. The District designation must be based only on information received from the employee or the employee's spokesperson.

Supervisors and/or payroll are responsible to inform Administration as soon as it is known that 5 days of consecutive or non-consecutive earned leave (i.e. vacation, sick leave, floating holiday, comp time, etc.) or workers' compensation will or has been taken by an employee for the same potentially qualifying FMLA condition. Administration will put the employee on notice of potentially qualifying for FMLA and ask the employee or his/her representative to respond within 30 calendar days to inform the district whether or not the condition is FMLA qualifying.

1. Employment Restoration

Any eligible employee who takes FMLA leave authorized by this policy is entitled upon return from FMLA leave to be restored in the same position or employment as held when the leave began or to be restored to an equivalent position with no adjustment to seniority dates and with equivalent employment benefits, pay, and other terms and conditions of employment.

An exception to the employment restoration provisions of this policy may be made if the employee on leave is a "key employee" that is a salaried employee and is among the highest paid ten percent of the District's employees, and restoring employment of the key employee would result in substantial and grievous economic injury to the District. In this situation the key employee will be notified of the District's intent to deny restoration and the key employee will be given an opportunity to return to work.

A fitness for duty certificate will be required if the employee shall be treated as a regular employee of the rights as governed by the appropriate bargaining agreement or District Policies governing matters involved with a layoff.

j. Cancellation of FMLA Leave

The District may cancel a leave of absence at any time the employee uses the leave for purposes other than stated when the leave was granted. An employee may cancel an approved FMLA leave and return to work by providing reasonable notice to the immediate supervisor. If the leave was for a serious health condition of the employee, the employee may return to work upon providing a fitness for duty certificate.

k. Method for Determining the “12-Month” Period: Leave Entitlement

The District will utilize a 12-month period measured forward from the date any employee’s first FMLA leave begins.

The FMLA regulations require the District give a 60 days notice to all employees and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee.

V Other

A. 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/or applicable regulations. To the extent that this policy is ambiguous or contradicts applicable law, the language of the applicable law will prevail.

- B. The requirements stated in the Collective Bargaining Agreement between employees in a certified collective bargaining unit and the school district regarding family and medical leaves (if any) shall be followed.

VI Dissemination of Policy

- A. This policy shall be conspicuously posted in each school district building in areas accessible to each employee.
- B. This policy will be reviewed at least annually for compliance with state and federal law.

Legal References: Minn. Stat. §§ 181.940-181944 (Parenting Leave)
10 USC. § 101 *et seq.* (Armed Forces General Military Law)
29 U.S.C. § 2601 *et seq.* (Family and Medical Leave Act)

Adopted: May 9, 2011

Revised: _____