

PERSONNEL SERVICES

Regulation 4321
(Form 4321)

Absences, Leave and Vacation

Family and Medical Leave

ELIGIBLE EMPLOYEES

Employees eligible for family and medical leave must:

1. Have been employed for a total of at least twelve (12) months (not necessarily consecutive); and
2. Have worked at least 1,250 hours during the twelve (12) months immediately preceding the commencement of the leave (for noninstructional staff and part-time instructional staff); or
3. Have been considered full-time (for instructional staff); and
4. Be employed at a work-site where the employer employs at least fifty (50) employees within a 75-mile radius.

An eligible employee may take unpaid leave for the following reasons:

1. The birth of the employee's child (leave must be concluded within one (1) year of the date of birth).
2. The placement of a child with the employee for adoption, or foster care when foster placement is pursuant to State action (leave must be concluded within one (1) year of the date of placement).
3. The care of the employee's child (including biological, adopted, or foster child, stepchild, legal ward, or child of a person standing in loco parentis, who is either under age 18, or age 18 or older and is incapable of self-care because of mental or physical disability), spouse or parent (including a person who stood in loco parentis to the employee when the employee was a child -- but not parent "in-law"), who has a serious health condition.
4. The serious health condition of the employee that makes the employee unable to perform the essential functions of the employee's position.

For purposes of FMLA policy, a serious health condition* is defined as an illness, injury, impairment, or physical or mental condition that involves the following:

1. Inpatient care (overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care.
2. Continuing treatment** by a health care provider***, including the following:
 - a. A period of incapacity of more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:
 - i. Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services under order of, or on referral by, a health care provider; or
 - ii. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment**** under the supervision of a health care provider.
3. Any period of incapacity due to pregnancy, or for prenatal care (even if the absence does not last more than three days and the employee or family member does not receive treatment from a health care provider during the absence);
4. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition (even if the absence does not last more than three days and the employee or family member does not receive treatment from a health care provider during the absence). A chronic serious health condition is one which:
 - a. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - b. Continues over an extended period of time (including recurring episodes of a single underlying condition);
 - c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
5. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either 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, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

* Unless complications develop, *serious health condition* does not include cosmetic treatments, such as most treatments for acne or plastic surgery, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc. Treatment for substance abuse by a health care provider or on referral by a health care provider may be a serious health condition if the conditions of this policy are met. Absence due to use of the substance, rather than for treatment, does not qualify for FMLA leave.

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

*** *Health care provider* includes doctors of medicine or osteopathy, podiatrists, dentists, clinical psychologists, optometrists, chiropractors (for limited purposes), nurse practitioners, nurse-midwives, clinical social workers, so long as they are licensed (if required by state law) and are performing within the scope of their practice as defined under state law; Christian Science practitioners listed with the First Church of Christ, Scientist, Boston, Massachusetts; any health care provider from whom an employer or a group health plan's benefit manager will accept certification to substantiate a claim for benefits; a health care provider as defined above who practices in a country other than the United States and is licensed in accordance with the laws of that country.

**** *Regimen of continuing treatment* includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. A "regimen of continuing treatment" that includes the taking of over-the-counter medications such as aspirins, antihistamines, or salves, or bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

LENGTH OF LEAVE

All Employees

An eligible employee is entitled to up to twelve (12) workweeks* of unpaid leave within a twelve-month period without loss of seniority or benefits. When both spouses in a family work for the District, they will be entitled to a total of twelve (12) weeks of unpaid leave (rather than 12 weeks each) for the birth, adoption, or foster placement of a child, or to care for a parent with a serious health condition.

The amount of leave available to an employee at any given time will be calculated by using the calendar year.

All leave taken under the policy and leave for any other reason that would qualify under FMLA (e.g., worker's compensation leave that qualifies as a serious health condition), will be counted against the employee's leave entitlement under FMLA.

Instructional Employees-End of Term Exceptions

If an instructional employee** seeks leave for any purpose, including the employee's own serious health condition, of at least three (3) weeks in duration and the requested leave would begin more than five (5) weeks prior to the end of the academic term (school semester), the District may require the employee to continue taking leave until the end of the school term,*** if the instructional staff member's return to employment would otherwise occur during the three (3) week period before the end of such term.

If the instructional employee seeks leave for any purpose other than the employee's own serious health condition, less than five (5) weeks prior to the end of the academic term, the District may require the staff member to continue taking leave to the end of the term,*** if the leave is greater than two (2) weeks in duration and the return to employment would occur within two (2) weeks prior to the end of the term.

If the instructional employee takes leave for any purpose other than the employee's own serious health condition, within three (3) weeks prior to the end of the term, and duration of the leave is greater than five (5) days, the District may require the staff member to continue the leave until the end of the term.***

* When an employee is not required to report for work for one or more weeks (e.g., instructional employees who do not report for work during Christmas/New Year holiday, or during the summer) such days do not count against the employee's FMLA leave.

** *Instructional employee*, as defined by the FMLA, means a person employed principally in an instructional capacity, whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aids who do not have as their principal function actual teaching or

instructing, or auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

*** When an employee 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.

COORDINATION WITH EXISTING LEAVE POLICIES

During a family or medical leave provided under this policy for birth, placement of a child for adoption or foster care, or for care of a family member, an employee shall first exhaust all unused vacation or personal days before continuing such leave on an unpaid basis.

During a leave related to the employee's serious health condition, the employee shall exhaust all available paid sick leave, personal leave or vacation before continuing such leave on an unpaid basis.

At the conclusion of a family or medical leave provided under this policy and regulation, an employee may elect to extend leave pursuant to the provision of other Board policies and regulations governing extended leave, so long as the employee is eligible for extended leave under such other policy or regulation. The amount of time taken for FMLA leave will be deducted from the period of leave available under other extended leave policies. Once the FMLA portion of the employee's leave has ended, and the employee has elected to continue on leave pursuant to another Board policy or regulation, the remaining portion of the leave will be governed by the provisions of the other policy or regulation with respect to compensation, benefits, reinstatement, and all other terms and conditions of employment as set forth in the other policy or regulation.

CERTIFICATION

If an employee takes a leave of absence because of the serious health condition of the employee or the employee's family member, the employee must submit to the Superintendent/designee, a written medical certification form (available in the Superintendent/designee's office) from a health care provider of the serious health condition. Failure to provide such certificate upon request may result in denial or delay of leave.

The District reserves the right to require that the employee receive a second (and possibly a third) opinion from another health care provider (at the District's expense) certifying the serious health condition of the employee or the employee's family member. The District reserves the right to require that an employee provide the District with re-certification of the medical condition for which leave is taken.

Before returning to work, an employee who is on leave of absence due to his/her own serious health condition must submit to the Superintendent/designee, a health care provider's written certification form that the employee is able to return to work (form available in the Superintendent/designee's office). Failure to provide such certification may result in the delay or denial of job restoration.

During the employee's leave, the District may also periodically inquire as to the employee's intent to return to work.

Employees requesting family leave, i.e., leave for the birth, adoption, or placement of a child for foster care, or to care for a child or parent with a serious health condition, pursuant to this policy may be requested to provide reasonable documentation of the family relationship.

INTERMITTENT OR REDUCED LEAVE

Leave taken under this policy for the birth of a child, the placement of a child for adoption or foster care, or to care for such child may be taken on an intermittent or reduced work schedule only with the approval of the Board of Education.

Non-Instructional Employees

Leave taken because of the employee or family member's serious health condition may be taken on an intermittent or reduced-schedule basis when medically necessary. If an employee seeks leave on an intermittent or reduced-schedule basis, the employee must submit medical certification, as discussed above, and additional certification from a health care provider, that the intermittent or reduced-schedule leave is medically necessary.

The District may require an employee taking intermittent or reduced-schedule leave to transfer temporarily to an alternative available position for which the employee is qualified or may modify the employee's current position to better accommodate the employee's recurring periods of leave.

The employee must make a reasonable effort to schedule the treatment so that it is not unduly disruptive to District operations.

Instructional Employees

Leave taken because of the employee or family member's serious health condition may be taken on an intermittent or reduced-schedule basis when medically necessary. If an employee seeks leave on an intermittent or reduced-schedule basis, the employee must submit medical certification, as discussed above, and additional certification from a health care provider that the intermittent or reduced-schedule leave is medically necessary.

If an instructional employee requests intermittent leave to care for a spouse, son, daughter, or parent, or for the serious health condition of the employee, that is foreseeable based on planned medical treatment, and the employee would be on leave for more than twenty (20) percent of the total number of working days over the period of the leave, the District may require the employee 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 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.

The employee must make a reasonable effort to schedule the treatment so that it is not unduly disruptive to District operations.

INSURANCE PREMIUMS

During an employee's family or medical leave of absence, the District will continue to provide health, life, vision, and dental insurance coverage for employees who are eligible for insurance benefits. Voluntary deductions (employee contributions) for (dependent) insurance for health/life/vision/dental (and employee disability and/or supplemental life insurance) must be paid in full each month and received by the twenty-fifth (25th) day of the month. Payments are to be submitted to the insurance office. Employees should contact the insurance office regarding specific arrangements for making the required payments.

JOB RESTORATION

Upon return from family or medical leave in accordance with this policy, the employee will be returned to the same or an equivalent position with no loss in benefits that accrued prior to the leave of absence. An employee who does not return to work at the end of an authorized leave may be subject to termination.

If an employee fails to return to work after the period of unpaid family or medical leave has ended, the District may recover health insurance premiums paid under the group plan during the leave period, except in certain circumstances (e.g., continuing serious health condition of employee or family member needing care, or other circumstances beyond control of employee). The District may recover any other insurance premiums (e.g., premiums for supplemental life insurance or for dependent coverage), submitted on behalf of the employee, for which the District has not been reimbursed, either upon the employee's return to work or the employee's failure to return after unpaid family or medical leave has ended.

NOTIFICATION

An employee who can reasonably foresee the need to take family or medical leave is required to notify the District of the date of commencement and the expected duration of the leave at least thirty (30) days in advance of the leave, or if the need for the leave is not foreseeable, as soon as practicable. When the need for leave is foreseeable, an employee's failure to provide 30 days notice prior to taking leave may result in denial or delay of leave. An employee requesting leave under this policy should submit a completed application for leave form (forms available in the Superintendent's office) to the Superintendent/designee.

An employee who requests leave under this policy shall receive written notice of the specific expectations and obligations of the employee, and the consequences for failure to meet these obligations. Such written notice shall be provided within a reasonable time after the employee gives notice of the need for leave under this policy, usually within two (2) business days.

An employee who requests leave that qualifies as family or medical leave under this policy, and who does not specifically request leave under this policy, shall be notified that such leave has been designated, and will be counted, as FMLA leave. Such notification shall occur promptly, usually within two (2) business days after the District has become aware that the leave qualifies as FMLA leave. The notification may be oral or in writing; however, oral notification that the leave has been designated as FMLA leave will be confirmed in writing on or before the next payday, unless the next payday occurs less than one week after the oral notification, in which case, written confirmation will be provided on the subsequent payday.

Family and Medical Leave Information

The foregoing regulation presents the pertinent provisions of the Family and Medical Leave Act of 1993 and complies with the requirements of the Act. If any employee desires additional information or explanation of the procedures and provisions of the Act, he/she is encouraged to seek additional information by obtaining a copy of the Act through the Superintendent's office or arranging a conference with the Superintendent/designee.