

FAMILY CARE AND MEDICAL LEAVE

A. Purpose and Scope

To grant family care and medical leave to eligible employees in accordance with current state and federal law.

B. General

1. Employees shall give the Associate Superintendent for Human Resources at least 30 days' written advance notice of his/her need for family care and medical leave.
2. The authority for approval or denial for employees to take unpaid family care and medical leave under the provisions of state and federal law shall be determined by the Associate Superintendent for Human Resources.
3. Suggestions or concerns relating to this policy and regulation should be directed to the Associate Superintendent for Human Resources.

C. Forms Used and Additional References

1. Employer Response to Employee Request for Family Care or Medical Leave.
2. The Family and Medical Leave Act Final Regulations: Changes and Clarifications. (Seyfarth, Shaw, Fairweather & Geraldson)

D. Procedures

Definitions

“Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person who assumes the role of a parent as long as the child is under 18 years of age or an adult dependent child incapable of self-care.

“Parent” means a biological, foster or adoptive parent, a stepparent, a legal guardian, or another person who assumed the role of a parent to the employee when the employee was a child.

“Serious health condition” means an illness, injury, impairment or physical or mental condition that involves:

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1. In-patient care in a hospital, hospice or residential health care facility, or
2. Continuing treatment or continuing supervision by a health care provider for: (a) a period of incapacity of more than three consecutive days; (b) any period of incapacity due to pregnancy; (c) any period of incapacity or treatment for a chronic serious health condition; (d) a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; (e) any period of absence to receive multiple treatments either for restorative surgery after an accident or other injury, or for a condition that would result in a period of incapacity in the absence of medical treatment.

Eligibility

Any otherwise eligible employee who has served the district more than one continuous year shall be eligible to take unpaid family care and medical leave under the provisions of state and federal law.

Employees who worked a minimum of 1200 hours (substitute hours excluded) during the previous year will be eligible for Family Care and Medical Leave. For eligibility purposes, full-time teachers are deemed to meet the 1200 hour test.

The District in its sole discretion will consider requests for Family Care and Medical Leave for employees who work less than 1200 hours.

Family care and medical leave may be used for the following reasons:

1. Because of the birth of the employee's child, and in order to care for the newborn child.
2. Because of the placement of a child with the employee for foster care or in connection with the employee's adoption of the child.
3. In order to care for the employee's child, parent or spouse with a serious health condition.
4. Because of the employee's own serious health condition which makes the employee unable to perform the functions of his/her job.

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Terms of Leave

Leave shall not exceed 12 work weeks during any 12-month period. This 12-month period shall coincide with the fiscal year.

Leave taken pursuant to the state Family Rights Act shall run concurrently with leave taken pursuant to the federal Family and Medical Leave Act, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions. In addition to family care and medical leave, an employee may be entitled to take unpaid pregnancy disability leave of up to four months.

Leave taken for the birth or placement of a child must be initiated within one year of the birth or placement of the child. Such leave shall not be taken intermittently or on a reduced leave schedule unless the district and the employee agree otherwise.

If both parents of a child work for the district, their family care and medical leave related to the birth or placement of the child shall be limited to a total of 12 weeks.

During the period of family care and medical leave, the district will allow the employee the option to use his/her accrued vacation leave, other accrued time off, and any other paid or unpaid time off negotiated with the district. Accrued sick leave shall be used when the purpose of the family care and medical leave is one for which sick leave can be taken pursuant to collective bargaining agreements and/or Board Policy.

Requests, Advance Notice and Certification

An employee shall give the Associate Superintendent for Human Resources at least 30 days' written advance notice of his/her need for family care and medical leave. If the employee learns of the need for this leave fewer than 30 days in advance, he/she shall provide such notice as soon as practicable.

If leave is needed for a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption of district operations. This scheduling shall be subject to the health care provider's approval.

An employee's written request to the Associate Superintendent for Human Resources for family care and medical leave shall be supported by a certification from the health care provider of the person requiring care. This certification shall include all of the following:

1. The date on which the serious health condition began.
2. The probable duration of the condition.
3. If the employee is requesting leave because of his/her own serious health condition, the health care provider's certification that due to the serious health condition, the employee is unable to perform the functions of his/her job.
4. If the employee is requesting leave to care for a child, spouse or parent who has a serious health condition, the certification shall also include the health care provider's:
 - a. Estimate of the amount of time the health care provider believes the employee needs to care for the child, parent or spouse, and
 - b. Statement that the serious health condition warrants the participation of the employee to provide care during a period of the treatment or supervision of the child, parent or spouse.

If additional leave is needed beyond that specified in the original certification, the district may require the employee to provide recertification as specified above.

The District may require the employee to obtain, at district expense, a second or third opinion from a health care practitioner to certify an employee's own serious health condition.

Intermittent/Reduced Work Schedule Leave

Leave related to the serious health condition of the employee or his/her child, parent or spouse may be taken intermittently or on a reduced work schedule when medically necessary; in such a case, the employee may be required to transfer temporarily to a different job that has the equivalent pay and benefits but could better accommodate recurring periods of leave.

Maintenance of Benefits

During the period of family care and medical leave, the employee shall continue to participate in the district's medical, dental and vision plan under the same terms offered to employees not on leave. (29 U.S.C. 2614; Government Code 12945.2)

During the period of family care and medical leave, the employee shall continue to be entitled to participate in life, disability and accident insurance plans, pension and retirement plans, supplemental unemployment benefit plans, and/or any other employee welfare benefit plan to the same extent and under the same conditions as apply to an unpaid leave taken for any other purpose. In the absence of these conditions, the employee shall continue to be entitled to participate in these plans, but the district will require the employee to pay the premium for periods not covered by accrued leave.

The District may recapture the health premiums paid on behalf of the employee if the employee fails to return from leave after the leave period has expired provided this failure to return is for a reason other than the continuation, recurrence or onset of a serious health condition of the employee or the employee's child, parent, or spouse or other circumstances beyond the employee's control.

Maintenance of Status

The employee shall retain his/her employee status with the district during the leave period, and the leave shall not constitute a break in service for purposes of longevity or seniority under any employee benefit plan or collective bargaining agreement. For purposes of layoff, recall, promotion, job assignment and seniority-related benefits such as vacation, the employee returning from leave shall have no less seniority than he/she had when the leave started.

Reinstatement

Upon granting an employee's request for family care and medical leave, the district shall guarantee to reinstate the employee in the same or a comparable position when the leave ends, except as allowed by law.

The district may refuse to reinstate an employee returning from leave to the same or a comparable position if the employee is a salaried "key employee" who is among the highest paid 10 percent of the district's employees.

An employee who takes leave has no greater right to reinstatement than if he/she had been continuously employed during the leave period. If the district reduces its work force during the leave period and the employee is laid off for legitimate reasons at that time, he/she is not entitled to reinstatement.

Notifications

In accordance with law, the district shall notify employees of their right to request family care and medical leave.

When employees request family care and medical leave, the district shall provide them with notice detailing the specific expectations and obligations involved.

E. Reports Required

None

F. Record Retention

Employee request and District response for family care and medical care leave will be maintained in the employees personnel file.

G. Responsible Administrative Unit

Human Resources

H. Approved By

Associate Superintendent for Human Resources

CALIFORNIA GOVERNMENT CODE

12940 Unlawful employment practices
12945 Pregnancy; childbirth or related medical condition; unlawful practice
12945.2 Family care leave; definitions; conditions
19702.3 Family care leave; exercise of rights

CALIFORNIA CODE OF REGULATIONS, TITLE 2

7297.0-7297.9 Family Care Leave

UNITED STATES CODE, TITLE 29

2601 et seq., Family and Medical Leave Act of 1993

CODE OF FEDERAL REGULATIONS, TITLE 29

825 Family and Medical Leave Act of 1993

Regulation Adopted:
TUSD: 4/9/96