

## Personnel – Certified/Non-Certified

### Personal Leaves/Family Medical Leave Act

The Board of Education (Board) will provide leave to eligible employees consistent with the Family and Medical Leave Act of 1993 (FMLA) as amended and the Family Medical Leave Act as part of the National Defense Authorization Acts of 2008 and for Fiscal Year 2010 (which expanded certain leave to military families and veterans for specific circumstances) and 2013 Final Rules. Eligible employees (employment for at least 12-months and at least 1,250 hours actually worked in the 12-month period immediately preceding the commencement of the leave) are entitled to up to 12 work weeks of unpaid family and medical leave in any 12-month period, or up to 26 workweeks of unpaid leave during a single 12-month period, to provide care for covered servicemembers. Amity Regional School District No. 5 (ARSD) will continue to pay ARSD's share of the employee's health benefits during the leave. In addition, ARSD will restore the employee to the same or an equivalent position with equivalent benefits, pay, and other conditions of employment after the termination of the leave in accordance with Board policy and collective bargaining agreements.

Paraprofessionals are also eligible for benefits equal to those under the federal FMLA, if such paraprofessional was employed for at least 12 months and for at least 950 hours over the previous 12-month period preceding the commencement of the leave. A paraprofessional is defined as a school employee who performs duties that are instructional in nature or delivers either direct or indirect services to students and/or parents and serves in a position for which a teacher has ultimate responsibility for the design and implementation of educational programs and services.

**Military Caregiver Leave:** Eligible employees are entitled to take unpaid leave for a covered family member's service in the Armed Forces, including a member of the U.S. National Guard or Reserves, for any one or for a combination of the following reasons:

- A "qualifying exigency" as defined by Department of Labor regulations arising out of an employee's spouse, son, daughter, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty status);
- To care for a covered family member who has incurred a serious injury or illness in the line of duty while on covered active duty in the Armed Forces provided that such duty or illness may render the family member medically unfit to perform duties of the member's office, grade, rank or rating: and/or
- To care for a covered family member who is a veteran who is undergoing medical treatment, recuperation, or therapy for a service-related illness or injury that was incurred or aggravated while on active duty and manifested itself before or after the member became a veteran, within five years after a veteran's active-duty service;
- To care for a parent of a military member called to active duty provided the military member is the spouse (including same-sex marriages\*), parent, or child of the employee.

\*Due to the Obergefell Supreme Court Decision, there is no distinction under the law between same sex and opposite sex spouses. It is advisable to refer to "marriage" and "spouse."

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When leave is due to a "qualifying exigency" of a service member, an eligible employee may take up to 12 work weeks of leave during any 12-month period. When such leave is to care for a covered servicemember with a serious injury or illness an eligible employee may take up to 26 workweeks of unpaid leave during a single 12-month period to care for the covered servicemember. Leave to care for an injured or ill service member, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period. Up to 12 of the 26 workweeks may be for an FMLA-qualifying reason other than to care for a covered servicemember.

Employees will not be deprived of any employment benefits accrued before taking FMLA leave.

ARSD will maintain health insurance benefits at the same basis as is provided to other similarly situated employees. Conversely, employees on FMLA leave are not entitled to accrue any seniority or benefits during the leave unless determined otherwise due to a collective bargaining agreement. When an employee returns from FMLA leave benefits will be resumed in the same manner as provided prior to taking the leave, subject to any changes in benefit levels that may have occurred during the FMLA leave period and which affect the entire work force. Leave available for eligible employees under FMLA is not intended to supplement leave otherwise provided to such employees. ARSD may require the eligible employee to substitute any accrued vacation or sick leave for any part of the 12-week period that may be taken for the serious health condition of a spouse, child, or parent, or for the employee's own serious health condition.

In complying with the FMLA, ARSD will adhere to the requirements of the Americans with Disabilities Act as well as other applicable federal and state laws.

The Board, in compliance with state statute, shall provide to its employees who are a party to a civil union with the same family and medical leave benefits under the federal Family Medical Leave Act (FMLA) as are provided to employees who are party to a marriage. The term "marriage" includes a same-sex marriage, which all states must now recognize, or common law marriages that either were entered into in Connecticut or another state that recognizes such marriages or, if entered into out of Connecticut, is valid in the place where entered into and could have been entered into in at least one state. In addition, the Board shall allow its employees leave time under this policy to serve as organ or bone marrow donors.

ARSD, in compliance with FMLA's regulations, will post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the provisions of the FMLA and providing information concerning the procedures for filing complaints of violations of the Act. Electronic posting may be utilized.

(cf. [4152.3](#) - Maternity; Adoptive; Child Care)

FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

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Legal Reference: P.L. 103-3 and 29 CFR Part 825 - The Family and Medical Leave Act of 1993, as amended by H.R. 4986, the National Defense Authorization Act for Fiscal Year 2008, Section 585. 29 U.S.C. §2601 et seq. and the National Defense Authorization act for Fiscal Year 2010, Public Law 111-84, section 565, Title V

Final Rule - published in Federal Register, Vol. 60, Nov. 4, Friday, January 6, 1995, as amended on February 3, 1995, March 30, 1995, and on November 17, 2008. Rules and Regulations (29 CFR Part 825).

Final Rule - published in Federal Register, Vol. 78, Wed. February 6, 2013

Final Rule - published in Federal Register, Vol. 80, No. 37 Wednesday, February 25, 2015

Connecticut General Statutes

[46b](#)-3800 Applicability of statutes to civil unions and parties to a civil union.

PA 07-245 An Act Concerning Family and Medical Leave for Municipal Employees.

PA 07-245 An Act Concerning Family and Medical Leave for Municipal Employees

PA 12-43 An Act Concerning Family and Medical Leave Benefits for Certain Municipal Employees

United States v. Windsor, U.S. 133 S. Ct. 2675 (2013)

Obergefell v. Hodges, No. 14-556, 135 S. Ct. 2584 (2015)

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The following administrative regulations apply only to the Family and Medical Leave Act (FMLA).

For purposes of this regulation the term "marriage" is defined to include a same-sex marriage, legally recognized in all states.

For purposes of this regulation, the term "spouse" refers to any individuals who are lawfully married under any state law, including common law marriages.

#### **Eligibility**

An employee who has worked for the District for at least 12 months is eligible for 12 workweeks of FMLA leave during a 12-month period provided the employee worked at least 1,250 hours in the 12 months preceding the beginning of the leave. The 12 months of employment need not be consecutive months. Hours worked includes all hours actually worked, including overtime hours. Time not actually worked, including paid leave time such as vacations, sick, or personal leave, or holidays are not counted towards the 1,250 hours of service. Unpaid leave of any kind or periods of layoff also are not counted. Full time professional instructional employees who are exempt from the wage and hour law may be presumed to have worked the minimum hour requirement. Pursuant to USERRA, an employee returning from fulfilling his/her National Guard or Reserve military obligation shall be credited with the hours of service that would have been performed but for the period of military service in determining whether he/she worked the 1,250 hours of service in the District. (§825.110)

Paraprofessionals are also eligible to benefits equal to those under the federal FMLA if such paraprofessional was employed for at least 12 months and for at least 950 hours over the previous 12-month period preceding the commencement of the leave. A paraprofessional is defined as a school employee who performs duties that are instructional in nature or delivers either direct or indirect services to students and/or parents and serves in a position for which a teacher has ultimate responsibility for the design and implementation of educational programs and services.

For purposes of FMLA leave, a 12-month period is the District's fiscal year, July 1 through June 30. (Note: the District has the option of designating another 12-month period based on calendar year or other criteria set out in the act provided the District applies it uniformly and consistently to all employees. The other options include calendar year; the 12-month period measured forward from the date of an employee's first FMLA leave date; 12-month period measured backward from the date the employee takes any FMLA leave.) The 12 months of employment need not be consecutive months.

#### **Serious Health Condition**

A "serious health condition" that would entitle an employee to FMLA leave is one involving continuing treatment by a health care provider that results in a period of incapacity of more than three consecutive, full calendar days and involves either treatment two or more times by a health care provider, within 30 days of the first day of incapacity, or treatment by a health care provider on at least one occasion followed by a regimen of continuing treatment under the supervision of the health care provider.

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Over the counter medication, bed rest, taking of fluids, exercise, and other activities that can be initiated without a visit to a health care provider do not constitute a regimen of continuing treatment.

Chronic conditions such as asthma, diabetes, or epilepsy are considered a serious health condition even if individual episodes of incapacity do not last more than three days. A chronic serious health condition is a condition which requires periodic visits, at least twice per year, for treatment by a healthcare provider, or by a nurse under a healthcare provider's direct supervision, continues over an extended period of time (including recurring episodes of a single underlying condition), and may cause episodic rather than a continuing period of incapacity. Furthermore, conditions need not be chronic or long term when the condition is one which is not ordinarily incapacitating but for which multiple treatments are given because the condition would likely result in a period of incapacity of more than three calendar days in the absence of medical intervention. Regarding long-term chronic conditions, the condition need not be incurable. The condition may involve a permanent or long-term incapacity and be one for which treatment may not be effective. (29 C.F.R. 825.114.)

### Health Care Provider

The definition of "health care provider" includes any health care provider recognized by the employer or accepted by the group health plan of the employer. It also includes clinical social workers. (29 C.F.R. § 825.102.)

### Types of Leave

An eligible employee may take FMLA leave for: (§ 825.200)

- ☐ The birth of the employee's son or daughter, and to care for the newborn child; (§ 825.112)
- ☐ The placement with the employee of a son or daughter for adoption or foster care; (§ 825.112)
- ☐ To care for the employee's spouse, parent, son or daughter, who has a serious health condition; (§825.112, § 825.113)
- ☐ The employee's own serious health condition that makes the employee unable to perform the essential functions of the employee's job; (§825.112, § 825.113)
- ☐ To care for an covered servicemember (current member of the Armed Forces, including a member of the U.S. National Guard or Reserves) with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember; (§ 825.112, §825.122, §825.123);
- ☐ A qualifying exigency (such as making legal, financial, and child care arrangements and taking care of family obligations), as defined by Department of Labor regulations of the employee's spouse, son, daughter, or parent who is on covered active duty (or has been notified of an impending call or order to covered active duty status); and
- ☐ A veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness, and who was discharged within the previous five years before the employee takes military caregiver leave to care for the veteran.

An employee may elect, or the District may require, an employee to use accrued paid

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vacation, personal, or family leave for any unpaid portions of family or medical leave taken for any reason. In situations where the leave is for the employee's own serious health condition, accrued paid sick leave shall be substituted for unpaid portions of family or medical leave prior to the substitution of accrued paid personal and accrued paid vacation leave. The amount of unpaid family or medical leave entitlement is reduced by the amount of paid leave that is substituted. (An employee may elect, or the District may require, an employee to use accrued vacation, personal or medical/sick leave for purposes of a medical leave.) An employee cannot compel the District to permit the employee to use accrued medical/sick leave in any situation which the leave could not normally be used.

In cases in which the employee is absent due to a worker's compensation injury that also qualifies as an FMLA serious health condition, and if the employee agrees with the Board to do so, the Board will apply the employee's available accrued paid leave in increments as a supplement to the worker's compensation weekly benefit in an appropriate amount so that the employee can maintain his/her regular weekly income.

All FMLA absences for the same qualifying reason are considered a single leave and the employee maintains eligibility as to that reason for leave throughout the applicable 12-month period.

An eligible employee for FMLA leave must receive at the time of their eligibility notice a written notice of "Rights and Responsibilities" detailing their specific expectations and obligations and explaining the consequences of their failure to meet these obligations. This notice shall include any requirement to provide medical certification, the right to substitute paid leave, payment for benefits, and job restoration rights upon expiration of the leave.

### **Spouses Employed by the School District**

If spouses, as defined in this regulation, eligible for leave are employed by this school district, their combined amount of leave for birth, adoption, foster care placement, and to care for a parent with a serious health condition, will be limited to a maximum combined total leave equal to 12 weeks in any 12-month entitlement period. If either spouse or both uses a portion of the total 12-week entitlement for the above cited purposes, each is entitled to the difference between the amount he/she has taken individually and the 12 weeks of FMLA leave for their own or their spouse's serious health condition in the 12-month entitlement period. An employee may not take FMLA leave to care for a parent-in-law.

### **Unforeseeable, Continuous, Intermittent and Reduced Leave**

Unforeseeable leave involves situations such as emergency medical treatment or premature birth.

Continuous leave is taken for a set number of days or weeks.

Intermittent leave is leave taken in separate blocks of time due to a single illness or injury rather than one continuous period of time.

Reduced leave is a leave schedule that reduces employee's usual number of hours per work week, or hours per workday.

Intermittent or reduced leave is available only for the employee's own serious health

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condition or to care for a spouse, son, daughter, or parent with a serious health condition. Such leave may not be used for the birth or adoption/placement of a child or to care for a newborn or recently adopted child. In the case of foreseeable intermittent or reduced leave, the employee must schedule the leave to minimize disruption to the district's operation.

An employee may take full-time, intermittent, or reduced schedule leave whenever it is medically necessary for a serious health condition of the eligible employee, his or her spouse, son, daughter, or parent. Intermittent leave or reduced schedule leave for other persons will be permitted only with the approval of the Superintendent or his/her designee.

The employee who wishes to use intermittent or reduced leave shall, whenever possible, give prior notification to the District. Although the District and employee may agree to an intermittent or reduced leave plan, the employee who uses family leave is not automatically entitled to use such leave on an intermittent basis or on a reduced leave schedule. The District may provide such leave for medical leave, but the District may transfer the employee to a position which is equivalent, but more suitable for intermittent periods of leave provided said leave amounts to more than twenty (20) percent of the total number of working days in the period during which the leave would extend. The employee must furnish the District with the expected dates of the planned medical treatment and the duration of the treatment. The Superintendent must authorize such leave in writing.

**Employee Entitlement to Service Member FMLA**

The federal FMLA and the Connecticut paraprofessional FMLA provisions entitles eligible employees to take leave for a covered family (spouse, son, daughter, parent) member's service in the Armed Forces. Except as listed in this section, an employee's rights, and obligations to service member FMLA leave are governed by existing FMLA policy and regulations.

Service member FMLA provides eligible employees unpaid leave for a covered family member's service in the Armed Forces, for any one or for a combination of the following reasons:

- ☐ A "qualifying exigency" arising out of a covered family member's active duty or call to covered active duty in the Armed Forces including deployment to a foreign country or to international waters may include issues arising from short notice deployment, attending certain military events, arranging for alternate childcare, attending school activities, addressing certain financial and legal arrangements, attending certain counseling sessions, engaging in rest and recuperation, parental care and attending post-deployment reintegration briefings as well as participating in additional activities arising out of the active duty or call to active duty. In order to secure leave for a qualifying exigency, employees must submit a completed DOL Form WH-384 along with a copy of the military member's active-duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the military member's covered active duty service. DOL Form WH 384 must be completed and returned within 15 calendar days of the date the District distributes the Form to the employee;
- ☐ To care for a covered family member who has incurred a serious injury or illness in the

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line of duty while on covered active duty in the Armed Forces including the National Guard or Reserves, provided that such duty or illness may render the family member medically unfit to perform duties of the member's office, grade, rank, or rating; and/or

☐ To care for a veteran suffering a service-related illness or injury, as long as the veteran was a member of the Armed Forces, National Guard, or Reserves within five years of requiring care.

When leave is due to a "qualifying exigency" of a service member, an eligible employee may take up to 12 work weeks of leave during any 12-month period. Eligible employees may take up to 26 workweeks of leave in a single 12-month period to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember (referred to as military caregiver leave). An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reasons during the single 12-month period. Leave that qualifies both as leave to care for a covered service member and leave taken to care for a family member with a serious health condition during the "single 12-month period" cannot be designated and counted as both leave to care for a covered service member and leave to care for a family member with a serious health condition.

Employees are not obligated to provide notice to the District when they first become aware of a covered family member's active duty or call to active duty status. An employee's obligation to provide notice of leave due to a qualifying exigency is triggered when the employee first seeks to take such leave. Where this leave is foreseeable, eligible employees must give at least 30 days advance notice of the need to take FMLA leave when he or she knows about the need for the leave in advance and it is possible and practical to do so.

In compliance with the final FMLA rule, §825.310, separate certification requirements shall be utilized for military caregiver leave. The District shall use the Form WH-385, Certification for Serious Injury or Illness of a Covered Servicemember - Military Family Leave and form WH-385-V Certification for Serious Illness or Injury of a Veteran for Military Caregiver Leave, in obtaining medical certifications of Military Caregiver Leave.

When such leave is to care for an injured or ill service member, an eligible employee may take up to 26 work weeks of leave during a single 12-month period to care for the covered service member (either currently serving service member or covered veteran). Leave to care for an injured or ill service member, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period. In order to care for a covered service member, an eligible employee must be the spouse, son, daughter, or parent or next of kin of a covered service member. Service member FMLA runs concurrent with any other leave entitlements provided under federal, state, or local law.

In order to secure this extended leave, employees must submit a completed DOL Form WH-385 (current service member) or WH-385-V (veteran). This Form must be completed and returned within 15 days of the date the District distributes the Form to the employee.

### Definitions

**Covered Service Member:** A member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy,



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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, at any time during the period five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy, and was discharged or released under conditions other than dishonorable at any time during the five year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

**Covered Active Duty:** In the case of a member of a regular component of the Armed Forces, duty during deployment of the member of the Armed Forces to a foreign country; and in the case of a reserve component of 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)

**Next of Kin:** The nearest blood relative of an individual. (In this order: brother, sister, grandparents, aunts, uncles, first cousins) Excluded are the covered service members' spouse, parent, son, or daughter, as they already are entitled to leave for this purpose. A covered service member may designate, in writing, another blood relative as his or her nearest blood relative for purposes of military caregiver FMLA leave. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to care for the covered service member either consecutively or simultaneously. When a designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin.

**Outpatient Status:** With respect to a covered service member, this means the status of a member of the Armed Forces assigned to:

- (a) a military medical treatment facility as an outpatient; or
- (b) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

**Qualifying Exigency:** The U.S. Department of Labor's definition of this term includes the following eight (8) situations: (1) short-notice 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 to address other events which arise out of the covered military member's active duty or call to active duty status, provided the employer and employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of such leave. (See form WH-384)

**Single 12-Month Period:** The U. S. Department of Labor has determined that for purposes of military caretaker leave is a period that commences on the date an employee first takes leave to care for a covered service member with a serious injury or illness.

**Serious Injury or Illness:** In the case of a current member of the Armed Services, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active

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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.

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 a period of five (5) years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty on the Armed Forces or existed before the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces and that manifested itself or after the member became a veteran, and is

- (i) 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 service member unable to perform the duties of the service member's office, grade, rank, or rating; or
- (ii) a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) 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
- (iii) 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
- (iv) 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.

In order to secure this extended leave, employees must submit a completed DOL Form WH-385 (current service member) or WH-385V (veteran). This Form must be completed and returned within 15 calendar days of the date the District distributes the Form to the employee.

### **Leave to Care for a Covered Service Member**

If the necessity for leave is foreseeable based on planned medical treatment, the employee shall:

1. make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the District; and
2. provide the District with at least 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave. If the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

The Board of Education may require that a request for leave to care for a covered service member be supported by a certification issued by the health care provider of the person in need of care. The employee shall provide, in a timely manner, a copy of such certification to the district.

Certification will be sufficient if it states:

1. the date on which the serious health condition or serious injury or illness commenced;

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2. the probable duration of the condition; and
3. the appropriate medical facts within the knowledge of the health care provider regarding the condition.

If leave is to be taken on an intermittent or reduced leave schedule for planned medical treatment, the certification must contain the dates on which such treatment is expected to be given and the duration of such treatment.

### **Leave Related to Active Duty or a Call to Active Duty**

If the necessity for leave because of a qualifying exigency arising from the fact that a family member is on covered active duty or has been notified of an impending call to active duty is foreseeable, the employee shall give such notice to the District as is reasonable and practicable.

The Board may require that a request for leave because of a qualified exigency arising from the fact that the employee's spouse, son, daughter, or parent or covered service member is on covered active duty or has been notified of an impending call to active duty be supported by a certification issued in accordance with regulations issued by the Secretary of Labor. If the Secretary issues a regulation requiring such certification, the employee shall provide, in a timely manner, a copy of such certification to the school district.

### **Benefits**

The District will maintain the employee's health coverage under the District's group health insurance plan during the period of FMLA leave. The Board will continue to pay its portion of medical insurance premiums for the period of unpaid family or medical leave. The employee should make arrangements with the District to pay the employee's share of health insurance (e.g. family coverage) prior to the beginning of the FMLA leave, to avoid loss of coverage. If the employee does not return to work after the leave's expiration, the employee will be required to reimburse the District for payment of medical insurance premiums during the FMLA leave, unless the employee does not return because of a serious health condition or circumstances beyond the control of such employee.

The employee will not lose any other employment benefit accrued prior to the date on which leave began but is not entitled to accrue seniority or employment benefits during the leave period. Employment benefits could include group life insurance, sick leave, annual leave, educational benefits, and pensions.

### **Notice**

When the FMLA leave is foreseeable, the employee must notify the District in writing of his/her request for leave at least 30 days prior to the date when the leave is to begin. The employee must explain the reasons for the needed leave so as to allow the District to determine whether the leave qualifies under FMLA. Failure to give notice may result in the leave beginning thirty days after notice was received. If the leave is not foreseeable, the employee must give notice as early as is practical under the facts and circumstances of the particular case, but no later than one to two workdays after learning that leave will be necessary. A spouse or family member or other responsible party may give the notice if the employee is unable to personally give notice. When the employee requests medical leave, the

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employee must make reasonable attempts to schedule treatment so as not to disrupt the District's operations.

The District, as required, will post, and keep posted on its premises, a notice explaining the provisions of FMLA and with information concerning the procedures for filing complaints of violations of the Act. Electronic posting is sufficient to meet this posting requirement. The notice must be posted even if the District has no FMLA-eligible employees. The FMLA notice, in the absence of an employee handbook, shall be given to each employee when hired.

The District, after receiving an employee's request for leave for a qualifying reason, will provide the employee the following information, listing the employee's obligations and requirements:

1. A statement clarifying whether the leave qualifies as family and medical leave and will, therefore, be credited to the employee's annual 12-week entitlement.
2. A reminder that employees requesting family and medical leave for a serious health condition or for that of an immediate family member must furnish medical certification of the serious health condition and the consequences for failing to do so.
3. An explanation of the employee's right to substitute paid leave for family and medical leave including a description of when the school district requires substitution of paid leave and the conditions related to the substitution.
4. A statement notifying employees for paying any premium or other payments to maintain health or other benefits.

(This notice may be accompanied by the FMLA medical certification form if the District requests its employees to complete such form. The notice of rights and responsibilities may be distributed electronically.)

The District must notify the employee, in writing, of his/her eligibility to take FMLA leave within five (5) business days of receiving said request, with medical certification(s) and any other required information, absent extenuating circumstances. The District may provide the "Eligibility" and "Designation" notices at the same time if there is sufficient information to do so.

In situations where the District has failed to provide timely notice and the delay does not cause the employee harm or injury, retroactive notice may be provided. In all cases where leave would qualify for FMLA leave protection, the District and the employee can mutually agree that the leave be retroactively designated as FMLA leave.

The District's failure to provide required notice can be considered "interference" with an employee's FMLA rights.

The District may deny the leave if the employee does not meet the notice requirements.

The District shall require the employee to provide certification of the employee's serious health condition from a health care provider containing specific information required under the law if he/she requests a medical leave. If there is a question concerning the validity of such certification a second, and, if necessary, a third opinion can be required both at the expense of the District. The health care provider designated or approved by the District may

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not be employed by the school system on a regular basis. In the case of a third opinion, the opinion of the third health provider will be binding on both the school district and the employee. The District shall also require the employee to present medical certification of the family member's serious health condition and that it is medically necessary for the employee to take leave to care for the family member.

If the leave was for reasons related to the employee's serious health condition, upon the employee's return to work, the District will require that the employee present a fitness statement from the employee's health care provider certifying that the employee is able to return to work.

The required certifications must be obtained from the health care provider who is treating the individual with the serious health condition.

Medical certification must be provided fifteen days after the request for medical certification unless it is impracticable to do so. Employees taking family and medical leave for the birth, adoption, or foster care of a son or daughter are not required to obtain a medical certification. The District may request recertification every thirty days. Recertification must be submitted within fifteen days of the District's request.

The District will utilize separate medical certificates forms when employees request leave to care for a family member with a serious health condition and for those situations when the medical need for leave is prompted by the employee's own serious health condition.

The District will notify employees, in writing, of any additional information that is necessary to complete the medical certificate and allow employees seven (7) calendar days to provide said additional information. If the employee fails to submit a complete and sufficient certification despite the opportunity to cure the deficiency, the District may deny FMLA leave.

Family and medical leave requested for the serious health condition of the employee or to care for a family member with a serious health condition which is not supported by medical certification shall be denied until such certification is provided. The District requires sufficient FMLA certification in support of any request for FMLA leave for either the employee's own or a covered family member's serious health condition.

Verification must also be presented when requesting FMLA leave to care for the employee's spouse, son, daughter, or parent with a serious health condition.

Upon request by the District, employees must provide FMLA certification even when substituting paid leave.

The District may request medical recertification for continuing, open-ended conditions, every six months. Medical recertification may be requested on a more frequent basis if there are other changed circumstances or for other reasons as outlined in the FMLA regulations.

The District may require annual medical certifications in cases where serious health conditions extend beyond a single leave year. This does not apply to certificates to support a request for injured service member leave.

**Restoration**

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An employee's right to return to the same or an equivalent position is contingent upon the employee's continued ability to perform all the essential functions of the position. The District may demand more than a "simple statement" of the ability to return to work. Fitness for duty certification for intermittent leave may be requested by the District if reasonable safety concerns exist.

When the employee returns from leave, the District will restore the employee to the same or an equivalent position with equivalent benefits, pay, terms and conditions of employment shift, and geographically proximate workplace in accordance with Board policy, practices, and applicable collective bargaining unit agreements. Employees are entitled to any unconditional pay increase, such as cost of living increases, that occur during the period to their FMLA leave.

Under certain circumstances, the District may deny restoration to a key employee. The District will comply with the notice requirements of the FMLA in denying restoration. A key employee is one who is among the highest paid 10% of the employees and whose absence would cause the District to experience a substantial and grievous economic injury.

Further, the District may deny restoration to an employee if the District shows that the employee would not otherwise be employed at time of reinstatement for reasons such as layoff, shift, or special project elimination. In addition, collective bargaining agreements between the Board and employee groups will not diminish the rights of the employee established by FMLA.

A returning employee cannot be restored to a position that requires additional licensure of certification.

Employees are not entitled to accrue seniority during any FMLA leave, but taking the leave may not result in the loss of any benefits that were accrued prior to the leave.

### **Instructional Employees**

Special rules apply to instructional employees. Instructional employees are those employees whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes teachers, 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 also does not include cafeteria workers, maintenance workers, or bus drivers.

Limitations apply to instructional employees who take intermittent or reduced leave. If the leave requested is

1. to care for a family member, or
2. for the employees own serious health condition; and
3. is foreseeable based on planned medical treatment (i.e. chemotherapy, prenatal visits, physical therapy etc.) and
4. the employee would be on leave for more than 20% of the total number of working days

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over the period the leave would extend, then the District may require the employee to choose either to:

1. take the leave for a period 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 equivalent pay and benefits, and which better accommodates recurring periods of leave than does the employee's regular position. However, an instructional employee cannot be transferred to an alternative position when the employee takes intermittent leave that amounts to twenty (20) percent or less of the total number of working days in the period during which the leave would extend.

Intermittent leave is not available to take care of a newborn or recently adopted child.

Limitations also apply to instructional employees who take leave near the end of a semester. When an instructional employee begins leave more than five weeks before the end of a semester the District may require the employee to continue taking leave until the end of the semester 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 semester.

An instructional employee, required to extend his/her leave by the District, shall not have the "extra" leave counted against the employee's 12 work week entitlement unless the employee requests said additional leave be counted against the FMLA entitlement.

When an instructional employee begins leave for a purpose other than the employee's own serious health condition during the five-week period before the end of the semester, the District may require the employee to continue taking leave until the end of the semester 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 semester.

When an instructional employee begins leave for a purpose other than the employee's own serious health condition during the three-week period before the end of a semester, 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 semester.

Leave may not be counted against an employee during times (vacation periods) when they are not normally required to work.

When the employee is required to take leave until the end of the semester, only the time until the employee is "ready and able" to work shall be charged to FMLA leave.

### **Failure to Return**

The District is entitled to recover health care premiums paid during the leave if the employee fails to return from leave. However, recovery cannot occur if the employee fails to return because of the continuation, recurrence, or onset of a serious health condition or due to

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circumstances beyond the control of the employee.

**Miscellaneous**

1. An employee's serious health condition may also be a disability within the meaning of the Americans with Disability Act (ADA) which may also trigger requests for paid leave or workers' compensation benefits. The District may follow procedures for requesting medical information under the ADA or paid leave or worker's compensation programs without violating the FMLA. The District may also consider any information received pursuant to such procedures or benefit programs in determining an employee's entitlement to FMLA-protected leave.
2. When employees seek leave due to an FMLA-qualifying reason for which the District has previously provided FMLA protected leave, the employee must specifically reference the qualifying reason for leave or the need for FMLA leave.
3. The District requires employees to comply with all usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. The requirements include providing written notice of the reasons and anticipated start and duration of the leave or requirement that employees contact a specific individual of the District to request leave.
4. If there is a dispute between the District and an employee as to whether leave qualifies as FMLA leave, it shall be resolved through discussions between the District and the employee. The discussions and decisions must be documented in writing.
5. Once an eligible employee communicates a need to take leave for an FMLA-qualifying reason, the District will not delay designating such leave as FMLA leave. Neither the employee nor the District may decline FMLA protection for that leave.