

District: Grenada School District
Section: G - Personnel
Policy Code: GBRIA - Family and Medical Leave Act

FAMILY AND MEDICAL LEAVE ACT (FMLA)

NOTE: In reviewing this sample policy, school districts are encouraged to seek legal advice, especially at those points below denoted with an asterisk (*).

IMPORTANT NOTICE

Due to the complexity of the Family Medical Leave Act (FMLA) and because it involves consideration of your district's leaves and absences policy and your practices, along with the Americans with Disabilities Act (ADA), the Fair Labor Standards Act (FLSA), the Consolidated Omnibus Budget Reconciliation Act (COBRA) and parts of the Internal Revenue Code relating to group health plans and cafeteria plans, all federal anti-discrimination laws and applicable state laws, it is not practical to attempt development of a detailed policy for the administration of the FMLA. Each request for leave must be evaluated individually due to myriad combinations of circumstances and medical conditions one may have to consider. It is strongly recommended that the school district purchase a competent analysis of the rules, regulations and guidelines of the FMLA to review while evaluating individual requests for leave under FMLA. The school district's attorney should always be consulted when there is uncertainty.

Of particular importance are the posting and notice requirements of the Act. You must conspicuously post and keep posted in all schools and offices where employees are employed and where applications for employment are taken a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of violations of the Act with the Wage and Hour Division. Copies of the required notice may be obtained from any local Wage and Hour Division Office. No reproductions of the notice may be any smaller than 8 x 11 inches and the text must be fully legible. Failure to post the required notice prohibits you from taking any adverse action against an employee as well as liability for payment of fines to the Department of Labor (DOL).

Information concerning FMLA entitlements and employee obligations must be included in any employee handbook or other documents providing written guidance explaining all the obligations and rights of an eligible employee whenever that employee requests leave under FMLA. A fact sheet is available from the nearest Wage and Hour Division Office that will provide this guidance.

Also, you must provide an employee who has given you notice of the need for FMLA leave a notice of your specific expectations and employee obligations. Such notice must detail all consequences for failing to meet these obligations. This notice must include the following information as is appropriate to the leave request being considered:

1. Whether the district will require a medical certificate of a serious health condition or recertification and what will happen if the employee fails to do so;
2. Whether the district will require the employee to furnish, prior to being restored to employment, a fitness for duty certificate;
3. That the taking of this leave will count against the employee's annual FMLA leave entitlement;

4. That the employee has a right to substitute paid leave (sick leave, vacation, personal days) for FMLA leave or whether the district will require the substitution of paid leave and any conditions related to substitution;
5. Whether the employee is a "key employee" and that restoration might possibly be denied after taking FMLA leave, explaining the condition required for you to deny restoration;
6. Whether the employee will be required to pay any health insurance premiums to maintain benefits while on leave and the arrangements for making the payments;
7. That if the employee fails to return to work after taking unpaid FMLA leave, he is potentially liable for payment of health insurance premiums paid by the school district;
8. That the employee has a right to restoration to the same or equivalent job* upon return from leave.

The school district is also expected to act in good faith in answering questions from employees about their rights and responsibilities under the FMLA.

FMLA provides that the school district shall make, keep and preserve records pertaining to its obligations under the Act in accordance with the record keeping requirements of section 11 C of the Fair Labor Standards Act (FLSA) and the FMLA. No particular order or form of records is required. No requirement exists that requires the school district to revise its computerized payroll or personnel records to comply; however, some items are required.

Leaves and Absences and The Family Medical Leave Act of 1993 (P.L. 103-3)

I. GENERAL

1. Definition

- a. "Eligible employee" means one who is employed at a school facility where at least 50 persons are employed, either there or within a 75 mile radius of that school facility as measured by road miles by the shortest route possible; and who has been employed for at least 12 months by the school district as of the date leave commences, and who has also provided at least 1250 hours of service during that 12 month period. Fifty-two (52) weeks of casual, intermittent or occasional employment qualifies as "at least 12 months". School district employees exempt from FLSA requirements are presumed to have worked 1250 hours.
- b. "Employee's spouse" as defined by Mississippi Law.
- c. "Employee's son or daughter" means biological child, adopted child or foster child, legal ward or the child for whom the employee is standing in loco parentis who is either under the age of 18 or above the age of 18 and incapable of self-care because of a mental or physical disability.
- d. "Employee's parent" means biological parent or an individual who stood (or now stands) in loco parentis to an employee when the employee was a child (not to include parents-in-law).
- e. "Employee's immediate family member" means spouse, son or daughter or parent as defined hereinabove.

- f. For the purposes of FMLA, "serious health condition" means an illness, injury, impairment or physical or mental condition that involves either in-patient care (overnight stay) in a hospital, hospice or residential medical care facility or continuing treatment by a health care provider.*

2. Leave Provisions

- a. An eligible employee is entitled to 12 unpaid work weeks of leave during any 12 month period for any one or more of the following reasons:
- i. The birth of a son or daughter, and to care for the newborn child (within 12 months of the birth).
 - ii. The placement of a child with the employee for adoption or foster care (within 12 months of the placement).
 - iii. To care for the employee's spouse, son, daughter, or parent with a serious health condition (not parent "in-law").
 - iv. Because of the employee's own serious health condition which makes the employee unable to perform the function of his/her job.
 - v. Service Member Exigency Leave: For absences caused by an active duty exigency when the employee's spouse, child, or parent is a service member.
 - vi. Military Caregiver Leave: To care for the employee's spouse, child, parent, or next of kin (if the employee is the nearest blood relative) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty.

IMPORTANT NOTE: The school district must choose any one of the following methods of determining the "12 month period". Once chosen, that method must be used consistently and changed only upon 60 days written notice to all employees.

- i. The calendar year;
 - ii. Any fixed 12 month "leave year", that is,
 - i. a fiscal year
 - ii. a year required by state law
 - iii. a year starting on the employee's employment anniversary date
 - iv. the 12 month period measured forward from the beginning date of the employee's FMLA leave
 - v. a rolling 12 month period measured backward from the date the employee uses FMLA leave (may not extend back before August 5, 1993).*
- b. Spouses have a 12 week aggregate leave limit except for personal illness or the illness of a child or the other spouse; that is, if each spouse took 6 weeks of leave for the birth of a child, each could later use an additional 6 weeks due to personal illness or to care for a sick child.
- c. Brother and sister employees would have an aggregate limit of 12 weeks to care for their parent.

- d. Special rules apply to this school district which allow it to require eligible instructional personnel only to take FMLA leave on an intermittent or reduced leave schedule, or to take leave near the end of a semester. Instructional employees are only those employees whose principal function is to teach and instruct students in a class, small group or individual setting. Instructional employees include teachers, teacher aides and assistant teachers who actually teach, coaches, driver's ed instructors and special ed assistants such as signers. All other eligible employees may request intermittent leave or leave on a reduced leave schedule to care for a family member or for the employee's own serious health condition.*

3. Notice Requirement

- a. School district employees must provide this district at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care or planned medical treatment for a serious health condition of the employee or family member.
- b. Due to lack of knowledge or a medical emergency, notice must be given as soon as is practicable, which means as soon as both practical and possible or at least verbally within 1 or 2 working days when the need for leave becomes known to the employee (followed by written notice).*
- c. Failure to give 30 days notice for foreseeable leave may result in the denial of the taking of FMLA leave until at least 30 days after the date the employee provides notice.*

II. REQUIRED CERTIFICATION

1. Eligible employees shall provide the superintendent certification of a serious health condition for his/her own serious health condition or that of a family member. The certification, to be signed by the health care provider,* shall be attached to the required written notice or submitted in a timely manner which shall be no more than three (3) working days after providing written notice. No leave period may begin without the approval of the superintendent. No approval shall be granted by the superintendent without the required written notice and certificate.
2. The certification is to include the following:
 - a. The date on which the serious health condition in question began.
 - b. The probable duration of the condition.
 - c. Appropriate medical facts regarding the condition.
 - d. A statement that the employee is needed to care for a spouse, parent or child (along with estimate of the time required) or that the employee is unable to perform his/her functions, and, in the case of intermittent leave, the duration of treatment to be given.
 - e. Signature of health care provider.
3. The school district may require that a second opinion be obtained at the school district's expense. The second opinion may not be provided by a health care provider employed by this school district. In the event of conflicting opinions, the school district may pay for a

third and final provider to offer a binding decision.

4. The school district may require subsequent written recertification on a reasonable basis.

III. EMPLOYMENT BENEFITS PROTECTION

1. An employee who completes a period of leave and has complied fully with the terms of this policy shall be returned either to the same position he/she had before the taking of leave or to a position which is genuinely equivalent (as compared to a comparable or similar job) in pay, benefits, and other terms and conditions of employment.

2. Taking of leave shall not result in the loss of any previously accrued seniority or employment benefits. Except for health benefits, no other benefits will accrue during the leave period.

3. The school district may exempt from the restoration requirement above a key employee who is in the highest paid 10 percent of this district's workforce within a 75 mile radius of the school facility if restoring the key employee would cause substantial and grievous injury to the classroom and instructional program.*

4. The school district shall notify the key employee of its intent not to restore him/her at the time of the request for leave or when the determination is made. If the leave has begun, the key employee shall have the option of deciding whether or not to return to work after receiving the notice. An employee who is not restored shall be considered to be on leave for the duration of his/her leave period.*

5. Health benefits shall continue through an employee's leave period, even for key employees who have been notified that reinstatement will be denied. The school district shall recover health coverage premiums paid for an employee who fails to return from leave except as follows:

a. No recovery will be made from a key employee who has chosen to take or continue leave after receiving notice of nonreinstatement.

b. No recovery will be made from an employee who fails to return from leave if the reason is the continuation, recurrence, or onset of a serious health condition, or something else beyond the employee's control, all of which is subject to the certification requirement in Section II, above.

IV. PROHIBITED ACTS

This school district shall not interfere with or restrain an eligible employee's right to exercise the provisions of this policy.* This policy shall take effect and be in force from and after August 5, 1993. An employee's service prior to this effective date shall be counted in determining whether the employee is eligible for leave.

LEGAL REF.: Family and Medical Leave Act of 1993

CROSS REF.: Policies GBRI - Absence from Duty
GBRID - Military Leave

Last Review Date: _____

Review History:[1/1/1900][1/1/1901]

[GBRIA Family Medical Leave Act FMLA 08 2013.pdf](#)

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