

**WASHINGTON CENTRAL UNIFIED
UNION SCHOOL DISTRICT**

Board of Directors' Policy

POLICY: **B35**

WARNED: **2.14.20**

ADOPTED: **3.4.20**

EFFECTIVE: **3.15.20**

FAMILY MEDICAL LEAVE POLICY

Policy

It is the policy of the Washington Central Unified Union School District to provide family and parental leave to employees as required under state and federal law.

I. Statement of Policy

This policy is intended to implement and comply with the Federal Family Medical Leave Act (FMLA) and the Vermont Parental and Family Leave Act (VPFLA). Where the policy and/or its procedures are silent on a specific situation or request made under this policy, state or federal regulations shall govern.

II. Reason for Leave – FMLA (Federal Law)

A. Employees who meet the applicable service requirements may be granted family, parental or medical leave up to sixty (60) days under the FMLA for the following reasons:

1. For the birth of an employee's child and to care for the newborn child;
2. For the placement with an employee of a child for adoption or foster care, and to care for the newly placed child;
3. To care for an employee's spouse, child, or parent, but not parent-in-law, with a serious health condition;
4. For an employee's serious health condition, which renders the employee unable to perform the functions of the position.
5. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty" or
6. Twenty-six work weeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

NOTE: Leave for birth or placement for adoption or foster care must conclude within twelve months of the birth or placement

B. For purposes of this policy, a "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

1. any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or

2. a period of incapacity requiring absence of more than three (3) consecutive calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
3. any period of incapacity due to pregnancy, or for prenatal care; or
4. any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
5. a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or,
6. any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.)

C. Eligibility

To be eligible for FMLA leave, an employee must (1) have worked for the district for at least 12 months; and (2) have worked at least 1,250 hours during the 12-months prior to the start of the leave. Under the federal law, hours worked is counted by the actual number of hours worked and does not include paid leave time.

III. Reason for Leave – VPFLA (State Law)

- A. Employees who meet the applicable service requirements may be granted family, parental or medical leave up to sixty (60) days under the VPFLA for the following reasons:
1. During the employee's own pregnancy and following the birth of an employee's child; or
 2. Within a year following the initial placement of a child 16 years of age or younger with the employee for the purpose of adoption;
 3. The serious illness of the employee; or
 4. The serious illness of the employee's child, stepchild, foster child, ward who lives with the employee, parent, spouse or parent of the employee's spouse.

NOTE: Leave for birth or placement for adoption must conclude within twelve months of the birth or placement

- B. For purposes of this policy, a "serious illness" is an accident, disease, or physical or mental condition that:
1. Poses imminent danger of death; or
 2. Requires inpatient care in a hospital; or
 3. Requires continuing in-home care under the direction of a physician.

C. Eligibility

To be eligible for VPFLA leave, an employee must (1) have worked for the district for at least 12 months prior to the start of the leave; and (2) have worked an average of 30 hours per week during the 12-month period immediately preceding the beginning of the leave as determined by contract and/or actual hours. Vermont law allows for paid leave time to be counted when calculating how many hours the employee has worked on average.

IV. Duration

- A. A FMLA and/or VPFLA leave of absence is defined as an unpaid leave of absence of up to sixty days. This entitles employees to take a leave of absence not to exceed sixty (60) days in any twelve (12) month period. The rolling 12-month period is measured backward from the date of an employee using any leave under FMLA and/or VPFLA.
- B. For the use of 26 weeks of FMLA leave to care for an injured or ill covered service member, the 12-month period begins on the first day the eligible employee takes FMLA leave to care for a covered service member and ends 12 months after that date.
- C. In calculating the amount of FMLA and/or VPFLA leave used by an employee, days that the district's business activity has ceased (i.e. school vacation) is not counted against the leave period as long as the time period of the ceased activity is one (1) week or more and the employee would not have regularly been scheduled to work during those periods.

V. Intermittent Leave (FMLA)

Normally FMLA leave will be taken in consecutive days. The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances. The employee requesting intermittent leave may be transferred temporarily to an alternative job that better accommodates recurring periods of leave. The position will provide equivalent pay and benefits.

NOTE: Use of intermittent leave for birth or placement of adopted children may be taken only with the approval of the district.

FMLA may be taken intermittently or on a reduced leave schedule under certain documented circumstances.

- 1. The Intermittent/reduced schedule leave may be taken when medical necessary to care for a seriously ill family member, or because of the employee's serious health condition.
- 2. Intermittent/reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child only with the employer's approval.
- 3. Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged as FMLA leave. Employees may not be required to take more FMLA leave than necessary to address the circumstances that cause the need for leave. Employers may account for FMLA leave in the shortest period of time that their payroll systems use, provided it is one hour or less. See attached appendix A for sample calculations.
- 4. Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their employers to schedule the leave so as not to unduly disrupt the employer's operations, subject to the approval of the employee's health care provider. In such cases, the employer may transfer the employee temporarily to an alternative job with equivalent pay and benefits that accommodates recurring periods of leave better than the employee's regular job.

5. If a teacher, or other “instructional employee” as defined by law, requires intermittent leave or leave on a reduced leave schedule for planned medical treatment which requires the teacher to be on leave for more than twenty percent (20%) of the teacher’s total number of working days during the period of time that the leave would occur, other restrictions may apply.

VI. Short Term VPFLA Benefit

A short-term benefit is provided under the VPFLA for eligible employees, which entitles these employees to take a leave not to exceed four (4) hours in any thirty (30) day period and not to exceed 24 hours in any twelve (12) month period. The leave must be taken in a minimum of two (2) hour segments and may be taken for any of the following reasons:

1. To participate in preschool or school activities, such as a parent teacher conference, which are directly related to the academic educational advancement of the employee’s child, stepchild, foster child or ward that lives with the employee;
2. To attend or to accompany the employee’s child, stepchild, foster child or ward who lives with the employee, or the employee’s parent, spouse/civil union partner, or parent-in-law to medical or dental appointments;
3. To accompany the employee’s parent, spouse/civil union partner or parent-in-law to other appointments for professional services related to their care and well-being;
4. To respond to a medical emergency involving the employee’s child, stepchild, foster child, or ward who lives with the employee or the employee’s parent, spouse/civil union partner or parent-in-law.

NOTE: **Employees are required to make a reasonable attempt to schedule appointments for which leave may be taken under this section outside of regular work hours. In order to take leave under this section, the employee shall complete the leave form and provide the earliest possible notice, but in no case later than seven (7) days before leave is to be taken except in the case of an emergency. Emergencies are defined as a circumstance in which the notice required could have a significant adverse impact on the family member or employee. At the option of the employee and consistent with the existing district policies, certain kinds of “paid leave” that are provided by the district may be substituted for (i.e. used concurrently with) unpaid VPFLA leave. For example, any vacation or personal leave to which the employee is entitled may be substituted for leave relating to a parent-teacher conference or a medical appointment provided such conference or appointment meets the requirements of subsection A.**

VII. Leave for Instructional Employees

1. In the event that a teacher or other instructional employee begins a leave under this policy more than five (5) weeks before the end of an academic term (semester), the district may require the teacher/employee to continue their leave until the end of the term/semester if:
 - a. The leave will last a minimum of three (3) weeks; and
 - b. The teacher would otherwise return to work during the three (3) week period before the end of the term/semester.
2. In the event that a teacher or instructional employee begins a leave under this policy for a purpose other than the teacher’s own serious health condition, during the five (5) week period

before the end of an academic term/semester, the district may require the teacher to continue their leave until the end of the term/semester if:

- a. The leave will last more than two (2) weeks; and
 - b. The employee would otherwise return to work during the two (2) week period before the end of the term/semester.
3. In the event that the teacher or other instructional employee begins the leave under this policy for a purpose other than the teacher's own serious health condition, during the three (3) week period before the end of an academic term/semester, and the leave will last more than five (5) working days, the district may require the employee to continue taking leave until the end of the academic term/semester.

NOTE: For subsections 1, 2 and 3 above, if the district requires a teacher to take more leave than he/she requested, the amount of additional leave required by the district for purposes of completing the academic term/semester will not be counted as leave utilized by the teacher under this policy.

VIII. Notice/Commencement of Leave

- A. If the need for FMLA and/or VPFLA leave is foreseeable in advance, the employee must provide thirty (30) days' notice before the leave is to begin. Otherwise, notice must be given as soon as practicable. Notice must be given to Human Resources. Notice may be given in person, by telephone, facsimile, other electronic means or by the employee's designated spokesperson if the employee is unable to do so personally. An employee giving notice of the need for FMLA and/or VPFLA leave must explain the reasons for the leave in order to allow the district to determine that the leave does or does not qualify as family or medical leave. Additionally, the notice should specify the date the leave is expected to commence and the estimated duration of the leave. Once the district is aware of the facts underlying the employee's need for leave, the district will determine whether or not the employee is qualified for leave under this policy and will give notice of the determination to the employee.

If the employee does not give the thirty (30) days' notice for foreseeable leave with no reasonable excuse, the district may delay the taking of the leave up to thirty (30) days after the time the employee gives notice. Leave may also be denied until the employee submits medical certification of the need for leave.

- B. In situations where the employee's need for leave is not foreseeable in advance (e.g. unexpected serious health conditions), the employee must provide notice of the need for leave as soon as is practicable. Once the district is aware of the facts underlying the employee's need for leave, the district will determine whether or not the employee is qualified for leave under this policy and will give notice of the determination to the employee.
- C. WCUUSD reserves the right to retroactively designate leave as FMLA leave for employees even if they do not submit a request/certification.

IX. Medical Certification

- A. A FMLA and/or VPFLA leave based on the serious health condition of the employee or the employee's spouse, child, stepchild, foster child, ward who lives with the employee, parent or parent of the employee's spouse requires the employee to provide certification from the appropriate health care provider to support the request. Failure to provide certification will

result in denial of the request for leave. The certification must state the date on which the health condition commenced, the probably duration of the condition and the appropriate medical facts regarding the condition. The form included with the procedures for this policy should be used to provide this certification. The certification should be sent to Human Resources to assure confidentiality.

- B. When leave is foreseeable and at least thirty (30) days' notice has been provided, the employee should provide the medical certification before the leave begins. If this is not possible, the employee must provide the certification to the Business Office upon request within the time frame requested, which will allow at least fifteen (15) calendar days after the request unless it is not practicable under the circumstances.
- C. If the employee is needed to care for a spouse, child, stepchild, foster child, ward who lives with the employee, parent or parent of the employee's spouse, the certification must so state, along with an estimate of the amount of time the employee will be needed. If the employee has a serious health condition, the certification must confirm that the employee cannot perform the functions of their job.
- D. A second or third medical opinion, at the district's expense, may be required. The second medical opinion will be provided by a health care provider not employed by the district. If the first and second opinion differ, the district, at its expense, may require the binding opinion of a third health care provider approved jointly by the district and the employee.
- E. Periodic recertification of the employee's status may be required during the leave period.

X. Paid Leave/Benefit Continuation/Concurrent Benefits

- A. If available, employees may use up to thirty (30) days of accrued paid vacation, sick and personal leave as provided under state law. Use of additional paid leave beyond these six (6) weeks will be determined in accordance with the applicable provisions of any existing master agreements, personal contracts and personnel policies. Paid leave will be used concurrently with unpaid FMLA and/or VPFLA leave and cannot be used to extend the FMLA and/or VPFLA period, unless otherwise provided in the collective bargaining agreement.
- B. Time off granted as an accommodation under the Americans with Disabilities Act (ADA) will also be treated as family/medical leave time.
- C. During a period of approved family or medical leave of up to sixty days, an employee will be retained on the district's health insurance plan under the same conditions as if the employee were still at work. For those employees who normally pay a portion of their health insurance premiums through payroll deductions, such deductions will continue through the period of FMLA and/or VPFLA leave. The employee's failure to make premium payments may result in cancellation of coverage.
- D. During a period of approved family or medical leave, an employee may also be retained on the district's other insurance plans (non-health insurance) for the duration of the FMLA/VPFLA leave provided the employee pays their share of the cost of the insurance premiums for said plans. Arrangements must be made with Payroll and/or Human Resources for the employee to pay their other (non-health) insurance premiums while on leave. The employee's failure to make the premium payments may result in cancellation of coverage.
- E. In the event an employee elects not to return to work upon completion of a family or medical leave, the district may recover from the employee the cost of any payments made to maintain the employee's coverage except where the employee does not return because of the

continuance, recurrence or onset of a serious health condition or other circumstances beyond the employee's control.

- F. Accrued sick, family, vacation or other paid leave may not be used to extend the twelve (12) week period provided by the FMLA and/or VPFLA, unless otherwise permitted by law or the collective bargaining agreement.
- G. **Whenever an employee is entitled to and/or granted paid or unpaid medical (disability), family or parental leave pursuant to the terms of existing master agreements, personal contracts, statutory provisions, such as Worker's Compensation and board personnel policies, and the employee is also entitled to leave pursuant to the FMLA and/or VPFLA for the same occurrences, and leave provided pursuant to existing master agreements, personal contracts, statutory provisions and board personnel policies, and that which is provided pursuant to the FMLA and/or VPFLA will be provided concurrently.**

XI. Job Restoration

- A. After the leave ends, the employee will be restored to their original job, or to an equivalent job with equivalent pay, benefits and other terms and conditions of employment. The district may also require that an employee present a medical certification of fitness (Return to Work Certification Form) before returning to work when the absence was caused by the employee's serious health condition. The district may delay restoring the employee to employment without such certification relating to the health condition, which caused the employee's absence and/or the certification of fitness for work. The district does not guarantee that an employee will be returned to their original job. The superintendent will make the determination as to whether a position is an "equivalent position."
- B. An employee on leave does not have greater job protection than if the employee had been continuously employed. For example, employees will not be restored to their original or an equivalent job if the employee has been informed before requesting leave that employment would terminate or if the position would have been eliminated for reasons unrelated to the leave.
- C. Additionally, job restoration may be denied to salaried "eligible" employees (i.e., "Key Employees") who are among the highest paid 10% of employees within 75 miles of the work site if such denial is necessary to prevent substantial and grievous economic injury to the district's operations. Employees who are in this category will be notified of their status as a "key employee" in response to the employee's notice of intent to take leave or when the leave commences, if earlier and the employee will be notified of the potential consequences with respect to reinstatement and maintenance of health benefits. Further, as soon as the district decides it will deny job restoration, it will notify the employee in writing of its determination, explain the reasons for this decision; if leave has commenced, offer the employee a reasonable opportunity to return to work from leave after giving this notice; and make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee requests restoration. Notice will be provided in writing in person or by certified mail.

XI. Conflict Between Statutory Provisions, Board Policy and/or Collective Bargaining Agreements

In the event conflicts exist between federal and/or state law, board policy or a collective bargaining agreement, the provision that provides the most generous benefit to the employee shall be followed, assuming the employee is eligible for the benefit provided by that provision.

APPENDIX A

SOME AESOP LEAVE EXAMPLES:

(Employees put in the actual time used and Aesop will calculate the leave.)

Teacher

A full-time teacher under the 2019-2020 contract works 7.5 hours per day. Leave for professional staff is taken in quarter-day increments as follows:

- $\frac{1}{4}$ day of 7.5 hours = .25 day = 1.875 hours (112.5 minutes)
- $\frac{1}{2}$ day of 7.5 hours = .50 day = 3.75 hours (225.0 minutes)
- $\frac{3}{4}$ day of 7.5 hours = .75 day = 5.625 hours (337.5 minutes)
- Full day = 7.5 hours = 1 day = 7.5 hours (450 minutes)

Administrator

A full-time administrator or salaried employee is based on an 8-hour day. It is also taken in quarter-day increments as follows:

- $\frac{1}{4}$ day of 8 hours = .25 day = 2 hours (120 minutes)
- $\frac{1}{2}$ day of 8 hours = .50 day = 4 hours (240 minutes)
- $\frac{3}{4}$ day of 8 hours = .75 day = 6 hours (360 minutes)
- Full day = 8 hours = 1 day = 8 hours (480 minutes)

Para-educator or 7 hour/day position*

A full-time para-educator works a 7-hour day. Leave for hourly staff is taken in one-quarter hour increments as follows:

- $\frac{1}{4}$ hour of 7 hours = .25 hour (15 minutes)
- $\frac{1}{2}$ hour of 7 hours = .5 hour (30 minutes)
- $\frac{3}{4}$ hour of 7 hours = .75 hour (45 minutes)
- 1-1/2 hours of 7 hours = 1.5 hours (90 minutes)
- Full day = 7 hours = 1 day (7 hours)

Custodian or 8 hour/day position*

A full-time custodian works an 8-hour day. Leave for hourly staff is taken in one-quarter hour increments as follows:

- $\frac{1}{4}$ hour of 8 hours = .25 hour (15 minutes)
- $\frac{1}{2}$ hour of 8 hours = .5 hour (30 minutes)
- $\frac{3}{4}$ hour of 8 hours = .75 hour (45 minutes)
- 1-1/2 hours of 8 hours = 1.5 hours (90 minutes)
- Full day = 8 hours = 1 day (8 hours)

*Use examples above for other hourly staff. Part-time people need to be verified.