

Family and Medical Leave Act
(Regulation)

This regulation should be read in conjunction with Policy GBGF.

On occasion, employees may find it necessary to be off from work while they are ill or to care for a family member. The Family and Medical Leave Act of 1993 (FMLA) allows eligible employees to take time off for specified family and medical reasons. This Regulation provides information on the circumstances in which leave is available under the FMLA and the conditions under which it may be taken. If employees have questions that are not answered by this regulation, they should contact the District's Human Resources Department.

1. Definitions

The District's FMLA Policy and Regulation are written with reference to the FMLA and its implementing regulations issued by the U.S. Department of Labor (DOL). What follows are definitions of several important terms used in the FMLA and the District's Policy and Regulation. For information on terms not defined below, employees should contact Human Resources.

"Child" means biological, adopted, or foster son or daughter, a stepchild, a legal ward, or a child of a person standing in loco parentis. Except in the case of qualifying exigency leave and military caregiver leave (see below), a "child" must be either under 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability at the time that leave commences.

For purposes of military caregiver leave (see below), "next of kin" means the nearest blood relative (other than the covered servicemember's spouse, parent, or child) who has been designated in writing by the servicemember for that purpose. If no designation has been made, "next of kin" means nearest blood relative in the following order of priority: (a) those granted legal custody by statute or court order, (b) brothers/sisters, (c) grandparents, (d) aunts/uncles, and (e) first cousins.

"Parent" means the biological, adoptive, step or foster mother or father, or an individual who stood in loco parentis to an employee when the employee was a child.

"Spouse" means husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage if the marriage is valid in the place where entered into and could have been entered into in at least one state. This definition includes an individual in a same-sex marriage, common law marriage, civil union, or domestic partnership.

"Rolling 12 month period" means the method of calculating available FMLA leave, whereby the District looks back at the 12 month period preceding the first day the employee uses FMLA leave to determine what portion of the requisite 12 work- weeks of FMLA leave is still available. If the employee used any FMLA leave during the previous 12 month period measured from the first day the employee uses FMLA leave, the employee will be eligible only for any remaining portion of the 12 workweeks of leave.

“Teacher” or “instructional employee” means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, small group, or an individual setting.

2. Eligible Employees

Employees are eligible if they have been employed by the District for at least 12 months, and have worked for at least 1,250 hours during the previous 12 months, and are employed at a worksite where there are at least 50 employees employed by the District within 75 miles of the worksite.

3. Reasons for Taking Leave

The FMLA permits an eligible employee to take leave for any of the following reasons:

- For the employee’s incapacity due to pregnancy, for the employee’s prenatal medical care, and for the birth of a child of the employee and the care for and bonding with the child after birth;
- For placement for adoption or foster care, and care for and bonding with a child after placement;
- To care for an employee’s spouse, parent, or child with a serious health condition;
- Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of the employee’s job;
- Because of a “qualifying exigency” as defined in Department of Labor (DOL) regulations, arising out of the fact that the spouse, son, daughter, or parent of the employee is a “military member” on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty); and
- To care for the employee’s spouse, son, daughter, parent or next of kin who is a “covered servicemember” with a serious injury or illness as defined in the DOL regulations (“military caregiver leave”).

4. Amount of Leave

a. Military Caregiver Leave

Military caregiver leave, when combined with other types of leave under this regulation, may not exceed 26 workweeks during the 12-month period that begins on the first day of such leave.

b. Other Forms of Family and Medical Leave

For all other forms of family and medical leave combined, eligible employees may take up to 12 workweeks of leave in a rolling 12 month period.

c. Spouses Both Employed by the District

If spouses are both employed by the District and are both eligible for FMLA leave, their total military caregiver leave, when combined with certain other forms of family and medical leave, may not exceed 26 weeks. In case both spouses are employed by the

District and are eligible for bonding leave for the birth, foster placement or adoption of a child, the combined total number of weeks of such leave to which such persons are entitled for care and bonding with a child is 12 workweeks in a rolling 12 month period. In addition, the combined total number of weeks of leave to which spouses both employed by the District are entitled for care of a parent with a serious health condition is 12 workweeks in a rolling 12 month period.

5. Conditions for Leave

a. Leave for Serious Health Conditions

Employees may take leave for the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's job. Also, employees may take leave to care for a spouse, parent or child with a serious health condition when such care is medically necessary. Not all illnesses or injuries qualify as a "serious health condition." For purposes of this policy, "serious health condition" means an illness, injury, impairment or physical or mental condition that involves: (i) inpatient care in a hospital, hospice or residential care facility; or (ii) continuing treatment by a health care provider, as defined in the applicable DOL regulations. Employees should contact Human Resources for more information on what qualifies as a serious health condition.

b. Bonding Leave for Birth/Adoption/Foster Placement

An eligible employee (either the father or the mother) may take leave for care and bonding with a newborn child (bonding leave) of the employee within 12 months following birth. Similarly, leave for care and bonding with an adopted or foster child of the employee following adoption or foster placement must be taken within 12 months following the adoption or foster placement. Such leave must ordinarily be taken in a single block of time, and may be taken on an intermittent or reduced leave schedule only if the District agrees in advance.

c. Pregnancy and Leave Following Birth

A pregnant employee may take leave prior to birth for prenatal medical exams or care, or if her condition makes her unable to work. An employee who has given birth may take leave to recover from the delivery and complications of birth for so long as this qualifies as a serious health condition, and may also take leave for care and bonding with the healthy newborn child in the first year after the child's birth. Both mother and father may take leave to care for the newborn, adopted or foster child if the child suffers from a serious health condition.

d. Qualifying Exigency Leave

Qualifying exigency leave is available only when the employee's spouse, parent or child is a "military member." For purposes of this policy, a "military member" is a current or retired member of the Armed Forces including a member of the Regular Armed Forces, the National Guard or Reserves, who is on "covered active duty" with or is "called to covered active duty" status by the United States government (or has been notified of an

impending call or order to covered active duty). “Covered active duty”, or “called to covered active duty” refers to duty during the deployment of the member with the Armed Forces in a foreign country.

Qualifying exigency leave is available only for the following circumstances, and only when those circumstances arise out of the covered military member’s active duty or call to active duty (“call-up”):

- (1) Short-Notice Deployment: To address issues caused by a call-up with notice of seven days or less;
- (2) Military Events: To attend events related to the active duty or call-up that are sponsored by the military, military service organizations, or the American Red Cross;
- (3) Childcare/School Activities: When necessary due to the active duty or call-up, to:
 - (a) arrange alternative childcare,
 - (b) provide childcare on an urgent but not routine or regular basis,
 - (c) enroll in or transfer to a new school or day care facility, or
 - (d) meet with school or day care staff.
- (4) Financial/Legal Arrangements: To:
 - (a) make or update financial or legal arrangements related to the absence for active duty or call-up, or
 - (b) to represent the military member in efforts to obtain military service benefits during active duty or for 90 days thereafter;
- (5) Counseling: To attend counseling by a non-health care provider for the employee, the military member, or the military member’s child, if the need arises from the active duty or call-up;
- (6) Rest and Recuperation: To spend up to 15 calendar days with the military member while the military member is on short-term, temporary Rest and Recuperation leave during the period of deployment;
- (7) Post-Deployment Activities: To:
 - (a) attend arrival ceremonies, reintegration briefings or other military-sponsored activities for 90 days following return from active duty, or
 - (b) to address issues arising from the military member’s death on active duty.
- (8) Care for Military Member’s Parent: To provide care to a military member’s

parent, who is incapable of self-care, when the care is necessitated by the military member's covered active duty. Such care may include arranging for alternative care, providing care on an urgent, immediate need basis, admitting or transferring the parent to a care facility, or attending meetings with staff at a care facility.

In the case of leave for a "qualifying exigency," notice shall be given by the employee as soon as is reasonable and practicable. Also, an employee seeking to take leave for a qualifying exigency must provide: (i) a certification supporting such leave issued as provided by regulation (employees should contact Human Resources for approved certification forms for this purpose); (ii) Rest and Recuperation leave orders; or (iii) other documents issued by the military settling for the dates of the military exigency leave.

e. **Military Caregiver Leave**

Military caregiver leave is available to care for a "covered servicemember" who has a serious illness or injury. Military caregiver leave is available only when the employee is the spouse, child, parent or next of kin of the "covered servicemember." For purposes of this policy, a "covered servicemember" includes a current member of the Armed Forces, including a member of the Regular Armed Forces, or National Guard or Reserves, 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. A covered servicemember also includes a covered veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness. A "serious illness or injury" is defined in accordance with the Family Medical Leave Act.

6. Notice of Leave

If the need for family/medical leave is foreseeable, an employee must give the District at least 30 days advance notice. If this is not possible, the employee must at least give notice as soon as practicable (normally the same day or the next business day after learning of need for leave). In a case where the employee does not provide 30 days notice of foreseeable leave, the employee may be asked by the District to explain why such notice was not practicable.

The employee must provide sufficient information for the District to determine whether the leave will qualify as FMLA leave and the anticipated timing and duration of the leave. When the employee seeks leave due to a qualifying reason, for which the District has previously provided FMLA leave, the employee must specifically reference the qualifying reason or need for the FMLA leave.

Additionally, if the employee is planning a medical treatment he or she must consult with the District in advance regarding the dates of such treatment and make a reasonable effort to schedule such treatment at times that do not unduly disrupt the District's operations, subject to the approval of the employee's health care provider.

As noted above, in the case of leave for a "qualifying exigency" of an employee whose spouse, child or parent is a member of the Armed Forces, notice shall be given as soon as practicable. Also, an employee seeking to take leave for a qualifying exigency must provide a certification supporting such leave. (Employees should contact Human Resources for the applicable form).

Eligible employees must use the District's Request for Family/Medical leave form available from Human Resources absent unusual circumstances.

7. Medical Certification

If an employee is requesting leave because of his or her own or a covered relative's serious health condition, or to care for a covered servicemember's serious injury or illness, the employee and the relevant health care provider must supply medical certification. The employee should obtain a Certification of Health Care Provider form from the Human Resources Department, which may include a list of the employee's job duties. When the employee requests leave, the District will notify him or her of the requirement for medical certification and when it is due (normally 15 calendar days after the request for certification). Failure to provide requested medical certification in a timely manner may result in denial of family/medical leave until it is provided, with any leave allowed not being subject to FMLA protections, unless there is a sufficient reason for delay.

The District, at its expense, may require an examination by a second health care provider designated by the District. If the second provider's opinion conflicts with the original medical certification, the District, at its expense, may require a third health care provider to conduct an examination and provide a final and binding opinion. The employee and the District must act in good faith to select and jointly approve the third health care provider. The District may require subsequent medical recertification. Human Resources can provide additional information on the circumstances in which recertification may be requested. Failure to provide requested certification within 15 calendar days, if such is practicable, may result in delay of further leave until the certification is provided.

8. Reporting While on Leave

If an employee takes leave because of his or her own serious health condition or to care for a covered family member, the employee must give notice as soon as practicable (within 2 business days if foreseeable) if the need for leave changes such that the employee needs more or less time off.

9. Leave Is Unpaid

When an employee gives notice of a need for FMLA leave, the employee should designate the date the FMLA leave will begin. FMLA leave ordinarily commences on the date the employee designates as needing time off for qualifying reasons. FMLA leave is unpaid leave, and runs concurrently with other types of applicable paid leave, including paid sick leave, vacation, sick leave bank, donated hardship leave and worker's compensation, unless otherwise prohibited by law. Thus, if the employee has accrued any available paid time off applicable to the reason for FMLA leave, this will be applied to and substituted for the first portion of FMLA leave and run concurrently with the FMLA leave period. Once the accrued paid time is exhausted, the remaining portion of any FMLA leave will be unpaid. In no case may the substitution of paid leave time for unpaid FMLA leave time result in receipt of more than 100% of the employee's salary. If an employee has suffered a work related injury or illness, and qualifies for worker's compensation benefits, these will be taken as applicable during the FMLA leave, and the employee will not be permitted or required to substitute or use accrued paid time off in lieu of

receiving worker's compensation benefits. If the employee has exhausted all paid leave, FMLA leave will run concurrently with other types of applicable unpaid leave

10. Medical and Other Benefits

During an approved family/medical leave, the District will maintain an employee's health benefits, as if he or she continued to be actively employed. If paid leave is substituted for unpaid family/medical leave, the District will deduct the employee's portion of the health plan premium as a regular payroll deduction. If the employee's leave is unpaid, he or she must pay his or her portion of the premium through personal check or money order made out to Colorado Springs School District No. 11. The employee's health care coverage will cease if the premium payment is more than 30 days late. If the payment is more than 15 days late, the District will send the employee a letter to this effect. If the District does not receive the co-payment within 15 days after the date of this letter, the employee's coverage as an employee under the District plan may cease (although continuation options may apply). If the employee elects not to return to work at the end of the leave period (to have returned to work, an employee must work at least 30 calendar days), the employee will be required to reimburse the District for the cost of the health benefit premiums paid by the District to maintain coverage during the unpaid leave, unless he or she cannot return to work because of the employee's or a family member's serious health condition or a serious injury or illness of a covered service member that would otherwise entitle the employee to FMLA leave, or other circumstances beyond his or her control.

11. Intermittent and Reduced Schedule Leave

Leave for the employee's own or a family member's serious health condition or for the serious injury or illness of a covered servicemember may be taken intermittently (in separate blocks of time due to a single health condition) or on a reduced leave schedule (reducing the usual number of hours worked per workweek or work day) if medically necessary. Leave due to a qualifying exigency also may be taken intermittently or on a reduced leave schedule, provided adequate notice is given and the Secretary of Labor's certification requirements (if any) are met. If intermittent or reduced schedule leave is unpaid, the District will reduce the employee's salary based on the amount of time actually worked. In addition, while an employee is on an intermittent or reduced schedule leave that is foreseeable based on planned medical treatment or recovery of the employee or a family member (including a covered servicemember), the District may temporarily transfer him or her to an available alternative position which better accommodates the recurring leave or reduced schedule and which has equivalent pay and benefits.

Leave because of birth of a child, foster care placement or adoption of a child may not be taken intermittently or on a reduced leave schedule unless the District and the employee both agree.

When instructional employees seek intermittent leave in connection with a family or personal illness or to care for a covered servicemember, which is foreseeable based on planned medical treatment and when such leave would constitute more than 20 percent of the total number of working days in the period during which the leave would extend, the District may require the employee to elect to take leave in a block (not intermittently) for the entire period or to transfer to an available alternative position within the school system, that is equivalent in pay, for which the employee is qualified and which better accommodates the intermittent situation. If an instructional employee does not give required notice of foreseeable FMLA leave to be taken

intermittently or on a reduced schedule, the District may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the District may require the employee to delay the taking of leave until the notice provision is met.

12. Returning From Leave

Employees on FMLA leave are asked to notify the Human Resources Department at least one week before the end of leave to confirm their availability to return to work as approved, and return to work on the scheduled date.

In addition, employees must promptly notify the District if: (a) they no longer intend to return to work at the expiration of leave, (b) they wish to return to work at the expiration of leave but may be unable to do so, (c) the circumstances described in the original certification have changed significantly, or (d) they desire an extension of FMLA leave (but not to exceed the total leave authorized by this policy). Such notification must be given in writing to Human Resources.

If an employee takes leave because of his or her own serious health condition, the employee must provide a return to work medical certification that the employee is fit to resume work, and able to perform his essential job duties, unless waived by the District. For employees on intermittent leave, the return to work certification is ordinarily required every 30 days if the employee has taken leave during that 30-day period and reasonable safety concerns exist. The employee should obtain a Return to Work Medical Certification Form from the Human Resources Department and provide this to his/her healthcare provider. The District ordinarily will attach a job description or other list of duties to the form. Employees failing to provide a Return to Work Medical Certification Form when requested by the District will not be permitted to resume work until it is provided.

The District reserves the right to consult with a public health official if there is any question about possible transmission of a disease in the school setting.

Because the end of the semester is a critical time for both teachers and students, the following conditions will apply to requests from teachers seeking to return from leave within the last three weeks of the semester:

- a. If the employee begins any category of family and medical leave five or more weeks prior to the end of the semester, the leave is for more than three weeks, and the employee would return to work during the three-week period before the end of the semester, the District may require the employee to continue taking leave until the end of the semester.
- b. If the employee begins leave because of the birth of a child, placement of a child for adoption or foster care, to care for a spouse, son, daughter or parent with a serious health condition, or to care for a covered servicemember less than five weeks before the end of the semester, the period of leave is greater than two weeks, and the employee would return to work during the two-week period before the end of the semester, the District may require the employee to continue taking leave until the end of the semester.

- c. If the employee begins leave because of the birth of a child, placement of a child for adoption or foster care, to care for a spouse, son, daughter or parent with a serious health condition, or to care for a covered servicemember three or fewer weeks before the end of the semester and the period of leave is greater than five working days, the District may require the employee to continue taking leave until the end of the semester.

If an employee does not return to work on the originally scheduled return date, or upon expiration of the family/medical leave, he or she will be deemed to have voluntarily terminated employment with the District, unless he or she has submitted a request to the District and been approved for an extended leave (see below) or such extended leave is permitted by other relevant policy or applicable law.

Reinstatement is determined in accordance with applicable law and accompanying regulations, Board policies and regulations, and/or negotiated agreements. Additional information is available from the District's Human Resources Department.

13. Extended Leave

An employee who requires additional leave beyond that permitted under this Regulation should consult the Human Resources Department and other applicable District policies.

14. Repayment of Benefits

In the event that an employee elects not to return to work upon completion of an approved unpaid leave of absence, the District may recover from the employee the cost of any payments made to maintain the employee's group health insurance coverage unless the failure to return to work was due to a continuation, recurrence or onset of a serious health condition of the employee or employee's family member, as certified by a physician, or because of the serious injury or illness of a covered servicemember, that would otherwise entitle the employee to leave under FMLA, or for other reasons beyond the employee's control.

Benefit entitlements based upon length of service will be calculated as of the last paid work day prior to the start of the unpaid leave of absence.

Employees may be expected to adhere to other notice requirements should they take FMLA leave. Human Resources will explain this to the employee.

Questions and forms: Should employees have any questions about the FMLA, Policy GBGF or this regulation, they should contact Human Resources. Employees may be required to complete forms other than those described above to be eligible to take FMLA leave; therefore, they should contact Human Resources as soon as they are aware FMLA leave will be needed.

15. Eligibility for FMLA Leave and USERRA (Uniformed Service of Employment and Reemployment Rights Act)

To the extent required by law, a period of leave by an employee necessitated by USERRA-covered military service will be counted in determining an employee's eligibility for FMLA leave.

16. Minimum Increments of Leave

The District will track FMLA leave using the smallest increment of time used for other leaves.

17. GINA (Genetic Information Non-Discrimination Act) Recordkeeping Requirements

FMLA documentation covered by GINA will be treated in accordance with the confidentiality requirements of GINA.

18. Colorado Family Care Act

Information about leave under the Colorado Family Care Act and its relationship to leave under this regulation, is provided in a separate regulation, GBGF-R-2.

Adopted October, 2009
Revised September 11, 2014
Revised February 9, 2018

CROSS REFS.: GBGF, Family and Medical Leave
GBGF-R-2, Colorado Family and Medical Care Act Leave, Regulation to
Policy GBGF, Family and Medical Leave

LEGAL REFS.: 29 U.S.C. §2601 *et seq.* (Family and Medical Leave Act)
20 C.F.R. Part 825 (*regulations*)
29 CFR 825.102 and 825.122(b)
C.R.S. § 8-13.3-201, *et seq.* (Family Care Act)
C.R.S. § 14-15-101, *et seq.* (Colorado Civil Union Act)