

Family Medical Leave

The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take up to (12) weeks of unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Consistent with applicable law and upon notice to the employee by the employing entity, FMLA and the appropriate and available paid time off run concurrently. Eligible employees are those whose employment is not limited in duration, who have been employed by the Fargo School District for at least 1,250 hours during the previous twelve months, and who have been employed by the district for at least 12 months (need not be continuous).

Qualifying reasons include the birth, adoption, or foster placement of a child; for the serious health condition of the employee, the employee's parent, child or spouse; for qualifying exigencies arising out of the fact that the employee's spouse, child or parent is on active duty or has been notified of an impending call or order to active duty in the Reserve or National Guard, in support of a contingency operation (The final rule clarified that this National Defense Authorization Act provision applies to a federal call to active duty, not a state call to active duty); or for military caregiver leave for a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty that is a spouse, child, parent or next of kin (This entitles the employee to up to 26 weeks of leave in a single 12 month period). Family leave used for the birth, adoption or foster care placement of a child expires within twelve months of the date of birth or placement.

Qualifying exigencies include such instances as short-notice deployment; military events and related activities; certain childcare and related activities resulting from active duty or call to active duty; making or updating financial and legal arrangements to address a covered military member's absence; short-term, rest and recuperation leave during deployment; or attending to certain post-deployment activities.

An eligible employee who is the spouse, child, parent or next of kin of a covered, wounded service member is entitled to a total of 26 workweeks of leave during a single 12-month period to care for the service member, which includes current members of the Regular Armed Forces as well as current members of the National Guard or Reserves. The "single 12-month period" for leave to care for a covered service member with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established by the employer for other types of FMLA leave. An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the "single 12-month period." (Only 12 of the 26-week total may be for a FMLA-qualifying reason other than to care for a covered service member.)

The definition of a covered service member was broadened to include veterans who satisfy certain criteria. In order to qualify as a covered veteran, the individual cannot have received a dishonorable discharge during the five-year period before the family member's first day of leave. Further, a covered veteran must establish that he or she has an injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran, *and* is:

1. 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;
2. A physical or mental condition for which the covered veteran has received a VA 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 caregiver leave;
3. A physical or mental condition that substantially impairs the 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

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.

The medical certification for military caregiver leave is no longer limited to providers who are affiliated with the Department of Defense (DOD), Veterans Administration (VA), or TRICARE. Now, eligible employees may also draw from the same list of health care providers allowed for other leaves under the regulations. The rules also clarified that for non-DOD, VA, or TRICARE healthcare providers, second and third opinions may be required consistent with the process already outlined in the regulations.

Family Medical Leave may be taken on consecutive days and weeks or intermittently so long as the total days do not exceed the equivalent of twelve weeks (26 weeks for military caregiver) and so long as the serious health condition of the employee or family member continues to be medically verified. If both spouses are employed by the Fargo School District, the aggregate leave is limited to twelve weeks.

Intermittent or Reduced-Leave Schedule

1. Leave increments are limited to one-hour periods of time (29 C.F.R. 825.203[d]) for hourly employees and .25 (1/4) days for certified teaching staff.
2. An employee should follow the regular notice procedures when requesting an intermittent or reduced-hour leave. If the leave is taken because of the birth or placement of a child, leave may be taken intermittently or on a reduced schedule only if the District agrees. If the leave is taken to care for a sick family member or for the employee's own serious health condition, leave may be taken intermittently or on a reduced schedule when medically necessary (29 C.F.R. 825.203[a]).
3. Instructional employees taking leave which is 20 percent or less of the working days during the leave period, and all non-instructional employees, may be required to transfer temporarily

to an available alternative position for which the employee is qualified and which better accommodates recurring periods of intermittent or reduced-schedule leave (29 C.F.R. 825.203, 805.204, 825.205, and 825.601). The alternative position must be equivalent in pay and benefits (29 C.F.R. 825.204).

4. If an instructional employee requests intermittent leave or leave on a reduced-leave schedule to care for a family member, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the Superintendent or designee may require the instructional employee to choose either to:
 - a) Take leave for a period(s) of a particular duration, not greater than the duration of the planned treatment.

OR

- b) Transfer temporarily to an available alternative position for which the employee is qualified, which has the equivalent pay and benefits, and which better accommodates recurring periods of leave than does the employee's regular position. (29 C.F.R. 825.601)

The Human Resources department shall inform an instructional employee whenever the employee will be required to wait to return to work until the next semester because of one of the following reasons (29 C.F.R. 825.602):

1. The employee's leave begins more than 5 weeks before the end of a term, the leave will last at least 3 weeks, and the employee would return during the 3-week period before the end of the semester.
2. The employee's leave, for a purpose other than the employee's own serious health condition, begins during the 5-week period before the end of a term; the leave will last more than 2 weeks; and the employee would return during the 2-week period before the end of the term.
3. The employee's leave, for a purpose other than the employee's own serious health condition, begins during the 3-week period before the end of a term and the leave will last more than 5 working days.

If an employee chooses, or is required, to take leave for *periods of a particular duration* in the case of intermittent or reduced-schedule leave, or is required to continue taking leave until the end of a school term, the entire period of leave taken will count as a FMLA leave (29 C.F.R. 825.603). Employees shall make a written request for the leave (attached below) at least thirty days prior to the commencement of the leave period. This provision may be waived by the Superintendent or their designee from Human Resources in a case where the employee had no reasonable anticipation of the situation requiring the leave. The employee is also responsible for notifying the building principal or immediate supervisor.

The district may require medical certification or recertification (no more often than every 30 days) that the leave is needed due to the employee's own serious health condition or that of a family member. If medical certification is requested, it must be returned to the district office within 15 days of the request unless it is not practical under the circumstances to do so despite diligent good faith efforts. If medical certification is not provided in a timely manner, Fargo Public Schools may deny FMLA. The district may also require verification from a social service agency in the case of an adoption or foster placement. The Superintendent may challenge the adequacy of a medical certification and require the employee to obtain a second opinion from a second health care provider, paid for by the District (29 C.F.R. 825.307). If a second medical opinion conflicts with the first, the Superintendent may require a third opinion, paid for by the District. The third health care provider must be designated or approved jointly by the District and the employee. The third opinion is final and binding (29 C.F.R. 825.308).

The district requires that the employee maintain communication with their building principal or immediate supervisor during their leave to keep them apprised of their return to work plans. The district may require that employees provide a release to return to work prior to their return.

When the leave period is completed, the employee will be returned to the same position or a similar position with equivalent compensation and benefits. If a reduction in force would have caused the position to be eliminated, this reinstatement does not apply. Employees utilizing family leave will be provided health related benefits at the same level received while actively employed. The employee is required to pay the same portion of the premium paid while actively employed. The employee granted such a leave will not lose any employment benefits accrued prior to the leave; however sick leave, emergency leave, retirement eligibility and eligibility for salary increments shall not accrue during the period of the leave.

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Required Forms

- Request for Family Medical Leave Form (below)
- Appropriate Department of Labor Certification:
 - Certification of Employee Serious Health Condition: <http://www.dol.gov/whd/forms/WH-380-E.pdf>
 - Certification of Family Member's Serious Health Condition: <http://www.dol.gov/whd/forms/WH-380-F.pdf>
 - Certification of Qualifying Exigency for Military Family Leave: <http://www.dol.gov/whd/forms/WH-384.pdf>
 - Certification for Serious Illness/Injury of Service Member for Military Family Leave: <http://www.dol.gov/whd/forms/WH-385.pdf>
- Certification of Adoption or Foster Placement (below, if applicable)

