



## **FAMILY AND MEDICAL LEAVE OF ABSENCE**

### **Statement**

To define the policy and procedure of the Torrington Board of Education with regard to family and medical leave required by the Family and Medical Leave Act of 1993 (FMLA), as amended, and accompanying regulations.

### **Policy Eligibility**

Employees who have worked for the Board for at least twelve (12) months and at least 1,250 service hours during the twelve (12) months preceding commencement of the leave are eligible for FMLA leave during the applicable 12-month period, as set forth below.

Full-time classroom teachers are deemed to meet the 1,250 service hour requirement. Teacher (or employee employed in an instructional capacity, 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, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily non-instructional employees.

A school paraprofessional is eligible for the same leave set forth in this policy if the paraprofessional has worked for the Board for at least twelve (12) months, and has worked at least 950 service hours during the twelve (12) months immediately preceding the start of a leave.

### **Reasons for FMLA Leave**

Leaves under the FMLA may be taken for any of the following reasons:

- A. Birth and/or care of a child of the employee.
- B. Placement of a child into the employee's family by adoption or by a foster care arrangement.
- C. Care of the employee's spouse, child or parent who has a serious health condition.

- D. Inability of the employee to perform the functions of the employee's position due to a serious health condition.
- E. Because of a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on (or has been notified of an impending call to) covered active duty in the Armed Forces (including a member of the National Guard or Reserves).

Qualifying exigencies may include:

- (1) Short-notice deployment activities (if a member receives seven or fewer calendar days-notice prior to the date of deployment);
- (2) Military events and related activities;
- (3) Childcare and school activities;
- (4) Financial and legal arrangements;
- (5) Counseling activities;
- (6) Rest and recuperation activities;
- (7) Post-deployment activities; and/or
- (8) Additional activities.

- F. To care for the employee's spouse, parent, son or daughter, or next of kin who is a covered service member with a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating. A covered service member includes (1) a member of the Armed Forces (including a member of the National Guard or Reserves) (a) who is undergoing medical treatment, recuperation, or therapy; (b) is in outpatient status; or (c) is on the temporary disability retired list for a serious injury or illness, and (2) a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness who was a member of the Armed Forces at any time during the five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy.

Any FMLA leave taken by an employee during the applicable twelve (12) month period will be used to determine the amount of available leave pursuant to the Family and Medical Leave Act. See "Method for Calculating Twelve Month Period", set forth below.

The right to family leave for the birth and/or placement of the child into an employee's family may only be taken within the twelve (12) months after the date of birth or placement of the child. In the case of unpaid leave for the birth or placement of a child, intermittent leave or working a reduced number of hours is not permitted, unless the Board agrees.

### **Length Of Leave**

Except in the case of leave to care for a covered service member with a serious injury or illness, an eligible employee is entitled to take up to a maximum of twelve (12) workweeks of FMLA leave during any 12-month entitlement period. An eligible employee is entitled to up to 26 workweeks of leave to care for a covered service member with a serious injury or illness during a single 12-month period as defined below in the "Method for Calculating Twelve Month Period" section.

If leave is taken for more than one of the qualifying reasons listed above, the employee is entitled to a combined total of 12 workweeks of leave during any 12-month entitlement period unless one of the reasons is to care for a covered service member with a serious injury or illness. If one of the reasons is to care for a covered service member with a serious injury or illness, then the employee is entitled to a combined total of 26 workweeks of leave during the single 12-month period, but is still limited to a combined maximum of 12 workweeks for leave taken for any reason other than to care for a covered service member with a serious injury or illness.

### **Intermittent Leave/Reduced Hours**

In the case of unpaid leave for serious health conditions, the leave may be taken intermittently or on a reduced hour's basis only if such leave is medically necessary. Where an employee requests intermittent leave or leave on a reduced hours basis due to a family member's or the employee's own serious health condition, the Board has the option, in its sole discretion, to require the employee to transfer to a temporary alternative job for which the employee is qualified and which better accommodates the intermittent leave or reduced hours leave than the employee's regular job. The temporary position will have pay and benefits equivalent to the employee's regular job. For nonexempt hourly employees, leave may be taken in increments of a quarter hour.

### **Substitution of Accrued Leave**

Employees will be required to use their available accrued paid leave time during the applicable twelve (12) week FMLA leave period. Available sick leave will be substituted first, followed by available personal leave and vacation time when the FMLA leave is taken because of a serious health condition of the employee or to care for a family member. The Board's policies, practice(s) and/or collective bargaining agreement(s) regarding vacation time, personal days, sick days or other leave time will determine if an employee has available accrued paid or unpaid leave. The employee will be notified in writing which accrued leave, if any, will be counted towards FMLA leave.

In addition, in cases involving absences due to a Workers' 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 Workers' Compensation weekly benefit in an appropriate amount so that the employee can maintain his or her regular weekly income level.

### **Employee Notice Requirements - Foreseeable/Unforeseeable Need**

When the necessity of leave is foreseeable due to the expected birth or placement of a child, the employee must provide the Board at least thirty (30) days-notice of the employee's intention to

take leave. If the date of placement of a child requires the employee's leave to begin in less than thirty (30) days from the date of notice to the Board, the employee must provide such notice as soon as practicable. Where the need for leave is unforeseeable, the employee must give notice as soon as practicable. The employee must provide sufficient information to make the school district aware that the employee needs FMLA-qualifying leave, and must inform the school district of the anticipated timing and duration of the leave. If the requested leave is for a reason for which leave was previously designated as FMLA leave by the school district, the employee must specifically reference the reason for the leave or the need for "FMLA" leave. In addition, an employee must inform the school district as soon as practicable if date(s) of scheduled leave change or are extended, or if the date(s) were initially unknown.

Where the necessity for leave is due to a family members or an employee's own serious health condition and is foreseeable based on planned medical treatment, the employee must:

- give at least thirty (30) days-notice, or as soon as practicable if treatment starts in less than thirty (30) days; and
- make a reasonable effort to schedule the treatment so as not to unduly disrupt the operation of the Board, subject to the approval of the health care provider.

### **Certification of Physician/Practitioner**

Any leave request based on a family member's or employees own serious health condition must be supported by certification from a health care provider. The employee must provide a copy of the certification to the Board in a timely manner (a minimum of fifteen calendar days will be allowed to provide the certification).

### **Health Insurance**

During FMLA leaves of absence, the Board will continue to pay its portion of the health insurance premiums and the employee must continue to pay his/her share of the premiums during any period of FMLA leave. During any paid portion of FMLA leave, any applicable health insurance premium payments will continue to be deducted from the employee's paycheck as usual. During any unpaid portion of FMLA leave, the School District will continue to pay its portion of medical insurance premiums for the period of unpaid FMLA leave. Failure of the employee to pay his/her share of the health insurance premiums may result in loss of coverage. If the employee does not return to work after the expiration of the leave, the employee will be required to reimburse the Board for payment of health insurance premiums during the FMLA leave, unless the employee does not return to work because of the presence of a serious health condition which prevents that employee from performing his/her job, or other circumstances beyond the control of the employee.

## **Other Benefits**

Employment benefits accrued by the employee up to the day on which the FMLA leave of absence begins will be available upon return from leave. With respect to pension and retirement plans, FMLA leave will be treated as continued service for purposes of vesting and eligibility to participate.

## **Return to Work**

The Board may require an employee on FMLA leave to report periodically on his/her status, and intention to return to work. Also, periodic recertification of the medical condition may be required.

An employee taking leave due to the employee's serious health condition may be required to obtain certification that the employee is able to resume work prior to returning from any FMLA leave. The Board will consider the nature of the employee's serious health condition, and the demands of the employee's position, when deciding whether to require certification of ability to resume work.

Employees who return to work from FMLA leave of absence within or on the business day following the expiration of the twelve (12) weeks are entitled to return to their job or an equivalent position without the loss of benefits or pay.

## **Method for Calculating Twelve Month Period**

For purposes of this policy, the following twelve-month period shall apply: The 12-month entitlement period for family or medical leave is measured forward from the date an employee begins leave that qualifies under the FMLA.

If any employee takes leave on an intermittent or reduced leave schedule only the amount of leave actually taken may be counted toward the twelve weeks of leave to which an employee is entitled. Where an employee normally works a part time schedule, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis. If any employee's schedule varies from week to week, a weekly average of the hours worked over the twelve months prior to the beginning of the leave period is used for calculating the employee's normal work week.

## **Both Spouses Working for the School District**

If both spouses are employees of the School District and request leave for the birth, placement of a healthy child by adoption or for foster care, or to care for a parent with a serious health condition, they only will be entitled to a maximum combined total leave equal to twelve (12) weeks in any 12-month entitlement period. If either spouse (or both) uses a portion of the total 12-week entitlement for one such purpose, each is still entitled to the difference between the

amount he or she has taken individually and the 12-week entitlement for FMLA leave for other FMLA purposes during any 12-month entitlement period. However, a husband and wife may each take up to twelve (12) weeks of FMLA leave for other FMLA-qualifying reasons, such as for their own serious health condition or if needed to care for their newborn or adopted child or with a serious health condition.

### **Intermittent Leave/Reduced Leave - Instructional Employees**

If an eligible 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 twenty-percent (20%) of the total number of working days over the period the leave would extend, The Board of Education, at its option, may require the employee to choose either to:

- A. Take leave for a period or periods of 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 equivalent pay and benefits and better accommodates recurring periods of leave than does the employee's regular position.

An instructional employee who does not give required notice of foreseeable leave to be taken intermittently or on a reduced leave schedule, may be required by the Board to take a leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the Board may require the employee to delay the taking of the leave until the notice provision is met. This notice provision, however, shall not be interpreted to be stricter for purposes of FMLA leave than the Board requires from its employees otherwise taking comparable paid or unpaid leave.

### **Academic Term**

The school year is divided into two academic terms. Academic term means the school semester which typically ends near the end of the calendar year or the end of spring each school year. An instructional employee who begins leave more than five weeks before the end of a term may be required by the Board to continue taking leave until the end of the term if:

- A. The leave will last at least three weeks, and
- B. The employee would return to work during the three-week period before the end of the term.

If 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 term, the Board may require the employee to continue taking leave until the end of the term if:

- A. The leave will last more than two weeks, and
- B. The employee would return to work during the two-week period before the end of the term.

If the 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 the term, and the leave will last more than five working days, the Board may require the employee to continue taking leave until the end of the term.

### **Medical Records**

Records and documents relating to medical certifications, recertification or medical histories of employees or employees' family members, shall be maintained in separate files/records and treated as confidential medical records.

### **Outside Employment**

An employee who is on family and medical leave may not engage in employment for any other employer or self-employment while on leave. Falsification of records and failure to correct records known to be false are violations of this policy and will result in discipline which may include termination from employment.

### **Legal References:**

Connecticut General Statutes:  
Conn. Gen. Stat. § 31-51rr

Regs. Conn. State Agencies 31-51rr-1, et seq.

United States Code:  
Family and Medical Leave Act of 1993, 29 U.S.C. Section 2601 et seq., as amended

29 CFR Part 825.100 et seq.

Title II of the Genetic Information Nondiscrimination Act of 2008, Pub.L. 110 233, 42 USC 2000ff; 29 CFR 1635.1 et seq.

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