



THE FAMILY MEDICAL LEAVE ACT (FMLA)

EDGEMONT UNION FREE SCHOOL DISTRICT
2024

INGERMAN SMITH, LLP

EMILY J. LUCAS, ESQ.



2

FAMILY AND MEDICAL LEAVE ACT (FMLA)

- FMLA is a federal law that requires school district, and other covered employers to provide up to 12 weeks of unpaid leave to eligible employees for medical or child-care purposes during a 12 week period.

3

ELIGIBLE EMPLOYEE

- Employed at least 12 months
- At least 1,250 hours of service during the preceding 12 months (more on this later)
- 50 or more employees are employed by the employer within 75 miles of the worksite. (Edgemont UFSD qualifies!)

4

ELIGIBLE TEACHERS

- Employed at least 12 months
- At least 1,250 hours of service during the preceding 12 months
 - Full-time teachers are generally deemed to meet this unless there is compelling evidence from the employer's records indicating otherwise. 29 C.F.R. Section 825.110(c)(3) (i.e. prior leave in year, abuse of sick days, etc.)
 - Summer school counts towards 1,250 hours

5

WHO IS A “TEACHER” FOR PURPOSES OF FMLA?

- Yes- A person in an instructional capacity 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. 29 C.F.R. §825.801.
- No- The term does not however include “teacher assistants or aides who do not have as their principal function actual teaching or instruction, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily non-instructional employees.”

6

I,250 HOURS- HOW IS IT CALCULATED?

- Only the time actually worked, including overtime hours worked, is counted
- Time not actually worked, including vacation, personal leave, sick leave, holidays, and any other form of paid time off is not counted.

7

WHAT ARE THE LEAVE ENTITLEMENTS?

- Eligible employee is entitled to 12 workweeks of FMLA in a 12 month period
 - Generally counted on a weeks basis, unless a request for intermittent leave (non-consecutive)
 - If employee is taking leave consecutively, calculation based upon weeks (not days)
 - For example, employee out on a 12 week child care leave. Employee calculates the leaves based upon work weeks.
 - If a holiday falls within a particular week- it does not alter the calculation.
 - However, if the school is closed for a week (i.e. winter recess) the recess period would not count towards the 12 week calculation.

*** There is a 26 week military caregiver leave option

8

WHAT CAN FMLA BE USED FOR?

Generally, 2 categories to use FMLA:

1. Family Leave

- Available for the birth and care of an infant, adoption and care of a child, and the placement with the employee of a child in foster care. 26 USC §2612(a)(1)(A)
- An employee may only take family leave during the 12 month period beginning with the date of birth or placement of a child. 29 USC §2612(a)(2)

2. Medical Leave

- Available to an employee who has a **serious health condition** that prevents the employee from performing his or her job or to care for a **spouse, dependent child, or parent** who has a serious health condition.

9

WHAT IS A SERIOUS HEALTH CONDITION?

- A serious health condition is defined by FMLA as:

“an illness, injury, impairment, or physical or mental condition” that involves hospitalization or other inpatient care or continuing treatment by a health care provider. 29 USC §2611(11)

CONTINUED MEDICAL LEAVE DEFINITIONS

Spouse: husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee was married, including “common law” marriage and same sex marriage.

Child: An employee may only take leave to care for an adult child when four conditions are met:

1. Child has a disability as defined by the Americans with Disabilities Act (ADA); and
2. Is incapable of self-care due to that disability; and
 - Incapable of self care: individual requires active assistance or supervision to provide daily self-care in three or more “activities of daily living” (i.e. grooming, hygiene, eating, etc.) or instrumental activities of daily living (cooking, cleaning, shopping, etc.)
3. Has a serious health condition; and
4. Is in need of care due to that serious health condition

*** Recently, the federal government has opined that employees can use FMLA to attend to CSE meetings for their children with disabilities



SPECIAL RULES WHEN SPOUSES WORK FOR THE SAME EMPLOYER

- Spouses who work for the same employer are limited to a combined total of 12 workweeks of leave in a 12 month period for the following FMLA reasons:
 - Birth of a child and bonding with the newborn child;
 - Placement of a child with the employee for adoption or foster care and bonding with the new-placed child; and
 - The care of a parent with a serious health condition (does not include in-laws)
- *** This combined limitation does not apply to leave for the care of a spouse or child with a serious health condition, or the employee's own serious health condition.



12

WHAT DOES FMLA GUARANTEE?

- It guarantees time off from work with the continuation of health benefits
- FMLA law does not require the employee be compensated during the leave
- Return to a position upon expiration of the leave

13

NOTICE REQUIREMENTS

- An employee must provide the employer at least 30 days advance notice 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 of a family member.
- If 30 days notice is not practicable, such as because of an emergency medical circumstance, notice must be given as soon as practicable.

14

MEDICAL CERTIFICATION

- An employer may request medical certification for leave. Allows for verification of a serious health condition
 - Widely used federal forms available online
 - Health care provider contact info
 - When the serious health condition began
 - How long is it expected to last
 - Unable to work and duration of inability?
 - Appropriate medical facts about condition
- Employee responsibility to complete the form in 15 days; with some exception



SPECIAL FMLA RULES FOR SCHOOLS

- If an instructional employee needs intermittent leave to care for a family member or due to employee's own serious health condition and the employee would be on leave for more than 20% of working days over the period of the leave the employer may require:
 - Take leave for a period of particular duration as long as not greater than the duration of the planned treatment; or
 - Transfer temporarily to an alternative position for which the employee is qualified with equivalent pay and benefits during the period of leave.

16

SPECIAL FMLA RULES FOR SCHOOLS

Leave at the end of an academic term

- Generally, a return from an FMLA within the last 2-3 weeks of a term = employer may require leave until the end of the term

17

COLLECTIVE BARGAINING AGREEMENTS

- An employer may provide greater family or medical leave benefits than FMLA, but these rights may not be diminished by the Employer.