CATASAUQUA AREA SCHOOL DISTRICT

No. 304

SECTION: Employees

TITLE: Family & Medical Leave

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304 – FAMILY AND MEDICAL LEAVE

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1. Authority

29 U.S.C. § 2601 *et seq*.; 29 CFR Part 825

The District shall provide all eligible employees with leaves of absence in accordance with the requirements of the Family and Medical Leave Act of 1993, as amended ("**FMLA**") and the regulations thereunder.

This policy shall be interpreted in accordance with the terms of FMLA and the regulations, and the rights, benefits, obligations, and limitations thereunder. When used in this policy, words and phrases defined or used in FMLA or the regulations shall have the same meaning as in FMLA or the regulations, unless a contrary meaning is clearly indicated. Words and phrases that are defined in this policy represent the general scope of the terms, but remain subject to any more expansive or restrictive conditions in specialized circumstances as defined or used in FMLA or the regulations. The regulations at 29 CFR Part 825 are much more detailed than this policy and should be consulted whenever there is any question as to how this policy should be interpreted or implemented, as this policy is intended to fully comply with FMLA and the regulations.

2. Delegation of Responsibility

The Superintendent shall develop administrative regulations as necessary to implement this policy, and designate the person(s) responsible to administer the District's responsibilities and actions under this policy and the record-keeping requirements of FMLA and the regulations.

3. Definitions

When used in this policy—

29 CFR §§ 825.102, 825.110

A. "<u>Eligible Employee</u>" means an employee of the District who, as of the date on which any FMLA leave is to commence, has been employed for a total of at least 12 months by the District and has completed at least 1,250 hours of service with the District during the previous 12-month period.

29 CFR § 825.112

B. "<u>General Qualifying Reasons</u>" means one or more of the following:

29 CFR § 825.120

1. For the birth of the employee's child, and to care for the newborn child. An employee's entitlement to FMLA leave for a birth expires at the end of the 12-month period beginning on the date of the birth;

29 CFR §§ 825.121, 825.122(f), (g)

2. For placement of a child with the employee for adoption or foster care.- An employee's entitlement to leave for the placement of a child for adoption or foster care expires at the end of the 12-month period beginning on the date the date of the placement.

29 CFR §§ 825.121, 825.124

3. To care for-the employee's child, spouse, or parent with a serious health condition;

29 CFR §§ 825.112, 825.123(a);

42 U.S.C. § 12101 *et seq*.; 29 CFR § 1630.2(n)

4. Because of a serious health condition that makes the employee unable to perform the functions of the employee's position. An employee is unable to perform the functions of the position where the health care provider finds that the employee is unable to work at all, or is unable to perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act ("**ADA**") and the regulations thereunder. An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment; and

29 CFR §§ 825.112, 825.126(a)

5. Because of any Qualifying Exigency arising out of the fact that the employee's spouse, child, or parent 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 status.

29 CFR §§ 825.112, 825.127

C. "<u>Military Caregiver Reasons</u>" means to care for a covered servicemember with a serious injury or illness if the employee is the spouse, child, parent, or next of kin of the covered servicemember.

29 CFR §§ 825.102, 825.113, 825.114, 825.119

D. "<u>Serious Health Condition</u>" means an illness, injury, impairment or physical or mental condition involving either inpatient care or continuing treatment by a health care provider. Conditions for which cosmetic treatments are administered. (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine,

routine dental or orthodontia problems, periodontal, disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of the FMLA regulations met. Mental illnesses or allergies may be serious health conditions, but only if all the conditions of 29 CFR § 825.113 are met. Substance abuse may be a serious health condition if the conditions of 29 CFR §§ 825.113 through 825.115 are met, subject to the conditions of 29 CFR § 825.119.

E. "Continuing treatment by a health care provider" has the same meaning as defined in 29 CFR §§ 825.102, 825.113(c), and 825.115.

29 CFR §§ 825.102, 825.125

F. "Health Care Provider" means any of the following persons authorized to practice in the jurisdiction in which they are operating and performing within the scope of their practice as defined under that jurisdiction's law: doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to treatment, consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist), nurse practitioner, nurse-midwife, clinical social worker, physician assistant, Christian science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts, and any health care provider from whom the District or its group health plan's benefit manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

29 CFR §§ 825.102, 825.122(c), 825.127(d)(2)

G. "Parent" means a biological, adoptive, step, or foster parent or any other individual who stood *in loco parentis* to an employee (or other person) when the employee (or other person) was a child (as defined below). This term does not include parents "in law."

29 CFR §§ 825.102 (son or daughter), 825.122(d)

H. 1. "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is 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 FMLA leave is to commence.

29 CFR §§ 825.102, 825.122(i), 825.127(d)(1)

2. "Child of a covered servicemember" means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered service member stood *in loco parentis*, and who is of any age.

29 CFR §§ 825.102, 825.122(h), 825.126(a)(5)

3. "Child on covered active duty or call to active duty status" means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood *in loco parentis*, who is on covered active duty or call to covered active duty status, and who is of any age.

29 CFR §§ 825.102, 825.122(b)

I. "<u>Spouse</u>" includes a spouse in a same-sex or common law marriage that is valid in the place where entered into.

29 CFR §§ 825.102, 825.122(d)(2)

J. "<u>Physical or mental disability</u>" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, as those terms are defined by the Equal Employment Opportunity Commission in 29 CFR Part 1630.

29 CFR §§ 825.102, 825.122(a), 825.127(b)

K. "<u>Covered servicemember</u>" means:

1. A current member of the Armed Forces, including a member of the 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, or
2. A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

29 CFR §§ 825.102, 825.122(a)(2), 825.127(b)(2)

L. "<u>Covered veteran</u>" means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

29 CFR § 825.126(b)

M. "<u>Qualifying Exigency</u>" means any of the following reasons described in 29 CFR § 825.126(b):

1. Short-notice deployment;
2. Military events and related activities;
3. Childcare and school activities;
4. Financial and legal arrangements:
5. Counseling;
6. Rest and recuperation;
7. Post-deployment activities;
8. Prenatal care; and
9. Additional activities which the District and the employee agree shall qualify, and agree to both the timing and duration of the leave.

29 CFR §§ 825.102, 825.600(c)

N. "<u>Instructional Employee</u>" means a District employee 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, psy-

chologists, curriculum, specialists, cafeteria workers, maintenance workers, bus, drivers, or other primarily non-instructional employees.

29 CFR §§ 825.102, 825.217

O. "Key Employee" means an Eligible Employee paid on a salaried basis (as defined in 29 CFR § 541.602) who is among the highest paid ten percent (10%) of all District employees.

29 CFR § 825.200(b)(2)

P. "Twelve-Month Benefit Period" means a period beginning on a July 1 and ending on the following June 30.

29 CFR § 825.127(e)

Q. "Twelve-Month Military Caregiver Period" means the period which begins on the first day the Eligible Employee takes FMLA leave to care for a covered servicemember and ends twelve (12) months after that date.

4. General Guidelines

A. *Right to Leave.*

29 CFR § 825.200(a)

1. An Eligible Employee is entitled to twelve (12) work weeks of leave for General Qualifying Reasons during any Twelve-Month Benefit Period.

29 CFR §§ 825.127(e), 825.200(f)

2. An Eligible Employee is entitled to twenty-six (26) work weeks of leave for Military Caregiver Reasons during a Twelve-Month Military Caregiver Period. This leave entitlement is to be applied on a per-covered-servicemember, per-injury basis, such that an Eligible Employee may be entitled to take more than one period of twenty-six (26) work weeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness. However, no more than twenty-six (26) weeks of leave may be taken within any single Twelve-Month Military Caregiver Period.

29 CFR §§ 825.127(e), 825.200(g)

3. Notwithstanding paragraph 2 above, an Eligible Employee is entitled to a *combined total* of twenty-six (26) work weeks of leave for General Qualifying Reasons and Military Caregiver Reasons during any Twelve-Month Military Caregiver Period, including no more than twelve (12) work weeks of leave for General Qualifying Reasons during any Twelve-Month Military Caregiver Period.

B. *Concurrent Use of Paid Leave.*

29 CFR § 9825.207(a)

Generally, FMLA leave itself is unpaid leave. However, if an employee has accrued paid leave available (including sick, personal, emergency, and vacation days) which can be used for any part of the period of FMLA leave, the employee will be charged with the use of available accrued paid leave instead of unpaid leave to the maximum extent possible. The accrued paid leave runs concurrently with the FMLA leave. The employee cannot "save" available accrued paid leave for use after the expiration of FMLA leave, and cannot take a full twelve (12) or twenty-six (26) weeks of unpaid leave after first using ac-

crued paid leave at the beginning of a period which qualifies as FMLA leave. For example, if an employee has four (4) weeks of available accrued paid leave at the beginning of a period of FMLA leave, the first four (4) weeks of the leave are paid leave, and thereafter the employee has eight (8) weeks of unpaid FMLA leave remaining for General Qualifying Reasons.

See 29 CFR §§ 825.207(e), 825.210(f), 825.216(d), 825.220(d), and 825.702(d) for the relationship between workers' compensation absences and FMLA leave.

C. *Intermittent Leave and Reduced Leave Schedule.*

29 CFR §§ 825.102, 825.202(a), (b)

"Intermittent leave" is leave taken in separate periods of time due to a single illness or injury rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of several months, such as for chemotherapy; a pregnant employee may take leave it intermittently for prenatal examinations or for her own condition, such as four periods of severe morning sickness.

A "reduced leave schedule" is a leave schedule that reduces the usual number of hours per work week, or hours per workday, of an employee. An example of an employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule.

29 CFR §§ 825.124, 825.202(b), 825.204(a), 825.302(f)

Intermittent leave or leave on a reduced leave schedule may be taken because of one's own serious health condition, to care for a spouse, parent, or child with a serious health condition, or for Military Caregiver Reasons, but only if there is a medical need for leave, and if such need can be best accommodated through an intermittent or reduced leave schedule. In that case, if the schedule is foreseeable based on planned medical treatment, including during a period of recovery, the District may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position.

29 CFR §§ 825.120(b), 825.121(b), 825.202(c), 825.204(a)

An Eligible Employee may use intermittent or reduced schedule leave after the birth of his/her child, or the placement of a child for adoption or foster care, to be with a *healthy* child only if the District agrees. In that case, the District may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position.

29 CFR §§ 825.120(b), 825.121(b), 825.204(b)-(d); 42 U.S.C. § 12101 *et seq*.

Transfer to an alternative position may require compliance with other applicable law (such as the Americans with Disabilities Act) and/or a collective bargaining agreement. The alternative position must have equivalent pay and benefits, although it does not have to have equivalent duties. The alternative position cannot require the employee to take more leave than is medically necessary. The District may not transfer the employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee.

29 CFR § 825.202(d)

Leave due to a Qualifying Exigency may be taken on an intermittent or reduced leave schedule basis.

29 CFR § 825.203

If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the District's operations.

29 CFR § 825.205(a)(1)

When an employee takes FMLA leave on an intermittent or reduced leave schedule basis, the District must account for the leave using an increment no greater than the shortest period of time that the District uses to account for use of any other form of leave (and in no event greater than one hour). The District may not require an employee to take more leave than is necessary to address the circumstances that precipitated the need for the leave.

29 CFR § 825.205(b), (c)

The length of the employee's normally scheduled work week is the basis for calculating the amount of time used for intermittent or reduced schedule leave. For example, if an employee who would otherwise work 40 hours a week takes off eight hours, the employee would use one-fifth (1/5) of a week of FMLA leave. Similarly, if an employee who would otherwise work 30 hours per week, works only 20 hours a week under a reduced leave schedule, the employee's 10 hours of leave would constitute one-third (1/3) of a week of FMLA leave for each week the employee works the reduced leave schedule. Further, if an employee would normally be *required* to work 48 hours in a particular week, but due to a serious health condition is unable to work more than 40 hours that week, the employee would utilize eight hours of FMLA-protected leave, or one- sixth (1/6) of a week of FMLA leave. *Voluntary* overtime hours an employee does not work may not be counted against the employee's FMLA leave entitlement.

D. Maintenance of Health Benefits.

29 CFR § 825.209

During any FMLA leave, the District shall maintain the employee's coverage under any group health plan of the District on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. An employee may choose not to retain group health plan coverage during FMLA leave. However, when the employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverage, without

any qualifying period, physical examination, exclusion of pre-existing conditions, etc.

29 U.S.C. §§ 1161-1168

Nonetheless, except for the continuation coverage requirements of the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended, the District's obligation to maintain health benefits during leave ceases if and when the employment relationship would have terminated if the employee had not taken FMLA leave; an employee informs the District of his or her intent not to return from leave; or the employee fails to return from leave or continues on leave after exhausting his or her FMLA leave entitlement in the Twelve-Month Benefit Period.

29 CFR §§ 825.210, 825.212(a)(1)

Any share of group health plan premiums, which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave on the same basis as if the employee had been continuously employed during the FMLA leave. If the FMLA leave is unpaid, the employee's payment is due at the same time as it would be made if by payroll deduction, or other system voluntarily agreed to between the employee and the District. The District's obligation to maintain health insurance coverage ceases under FMLA if an employee's premium payment is more than thirty (30) days late. In order to drop the coverage for an employee whose premium payment is late, the District must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least fifteen (15) days before coverage is to cease, advising that coverage will be dropped on a specified date at least fifteen (15) days after the date of the letter unless the payment has been received by that date. The District may recover from the employee the employee's share of any premium payments missed by the employee for any FMLA leave during which the employer maintains health coverage by paying the employee's share after the premium payment by the employee is missed.

29 CFR § 825.213

In addition, if the employee fails to return to work after the employee's leave entitlement is exhausted or expires, the District may recover the District's share of group health plan premiums paid for coverage of the employee for the portion of FMLA leave which was unpaid, *unless* the reason the employee does not return is due to:

1. The continuation, recurrence, or onset of either a serious health condition of the employee, or the employee's family member, or a serious injury or illness of a covered servicemember, which would otherwise entitle the employee to leave under FMLA; or.

2. Other circumstances beyond the employee's control, such as the need for a parent to stay home with a child who has a serious health condition, but not including a situation where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care, or a parent chooses not to return to work to stay home with a well, newborn child.

If the District is precluded from recovering its share of health benefit premium payments due to paragraph 1 above, the District may require medical certification of the employee's or the family member's serious health condition or the covered servicemember's serious injury, or illness. If the District request medical certification and the employee does not provide it within thirty (30) days, and the reason for not returning to work, does not meet the test in paragraph two above, the District may recover one hundred percent (100%) of the health benefit premiums it paid during the period of unpaid FMLA leave.

29 CFR § 825.300

E. *Required Notices to Employees.*

1. *General Notice.*

The District shall post and keep posted on its premises in conspicuous places where employees are employed, a notice explaining the provisions of the FMLA and providing information concerning the procedures for filing complaints of violations of the FMLA with the Wage and Hour Division. The District shall also provide this general notice to each employee, including the notice and employee handbook or other written guidance to employees concerning employee, benefits, or leave rights, or by distributing a copy to each new employee upon hiring. These notifications must satisfy the requirements of 29 CFR § 825.300(a). The District should utilize the U.S. Department of Labor Wage and Hour Division Poster **WHD Publication 1420** to ensure that proper general notices are provided.

2. *Eligibility Notice and Rights and Responsibilities Notice.*

When an employee requests FMLA leave, or when the District acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the District must notify the employee of the employee's eligibility to take FMLA leave within five (5) business days, absent extenuating circumstances, unless the notice is not required due to a recent previous notice. This eligibility notice shall comply with the requirements of 29 CFR § 825.300(b), including requirements for providing written notice of any changes in the eligibility notice. Each Time the eligibility notice is provided to an employee, the District shall also provide a rights and responsibilities notice which complies with the requirements of 29 CFR § 825.300(c), and also written notices of any changes in the rights and responsibilities notice as required by that regulation. The District should utilize the U.S. Department of Labor Wage and Hour Division **Form WH-381** to ensure that proper eligibility and rights and responsibilities notices are provided to employees.

3. *Designation Notice.*

When the District has enough information to determine whether leave is being taken for an FMLA-qualifying reason (*e.g.*, after receiving a certification), the District must notify the employee whether the leave will be designated and will be counted as FMLA leave within five (5) business days absent extenuating circumstances. The requirements for the designation notice are set forth at 29 CFR § 825.300(d), including requirements for providing written notice of any changes in the designation notice. The District should utilize the U.S. Department of Labor Wage and Hour Division **Form WH-382** to ensure that proper designation notices are provided to employees.

29 CFR § 825.127(e)(4)

In the case of leave that qualifies during a Twelve-Month Military Caregiver Period as both leave for Military Caregiver Reasons and leave to care for a family member with a serious health condition, the District shall designate such leave as leave for Military Caregiver Reasons in the first instance, and it shall not be designated as both leave for Military Caregiver Reasons and leave to care for a family member with a serious health condition.

29 CFR §§ 825.302, 825.303

F. *Required Notices by Employees to the District.*

An employee should provide notice sufficient to make the District aware that the employee needs leave, whether the FMLA may apply to the leave, and the anticipated timing and duration of the leave. Absent unusual circumstances, the employee should comply with the District's usual and customary notice and procedural requirements for requesting leave.

If the need for leave is foreseeable, an employee must provide the District at least thirty (30) days advance notice before FMLA leave is to begin, or as soon as practicable (generally the same or next business day) if thirty (30) days notice is not practicable. For foreseeable leave due to a Qualifying Exigency, notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable.

If the need for leave is unforeseeable, an employee must provide notice to the District as soon as practicable under the facts and circumstances of the particular case. Notice may be given by the employee's spokesperson (*e.g.*, spouse, adult family, member, or other responsible party) if the employee is unable to do so personally.

When planning medical treatment, the employee must consult with the District and make a reasonable effort to schedule the treatment so as not to disrupt unduly the District's operations, subject to the approval of the health care provider.

G. Certifications Required From Employees.

29 CFR §§ 825.305(a), 825.307

The District may require that an employee's leave to care for the employee's covered family member with a serious health condition, or due to 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 position, be supported by a certification issued by the health care provider of the employee or the employee's family member. The District may not request additional information from the health care provider other than for clarification and authentication permitted under 29 CFR § 825.307(a). If the District has reason to doubt the validity of a medical certification, the District may require the employee to obtain a second opinion at the District's expense, and if the opinions of the two health care providers differ, the District may require the employee to obtain a third opinion at the District's expense, all subject to the requirements of 29 CFR § 825.307(b) and (c).

29 CFR § 825.306

No information may be required beyond that specified at 29 CFR §§ 825.306 to 825.308. The District should utilize the U.S. Department of Labor Wage and Hour Division **Form WH-380-E** (for the employee's condition) or **Form WH-380-F** (for a family member's condition) for medical certifications, including second and third opinions, to ensure that proper requests and certifications are provided.

29 CFR § 825.123(b)

In requiring a certification from a health care provider, the District may provide a statement of the essential functions of the employee's position for the health care provider to review. A sufficient medical certification must specify what functions of the employee's position the employee is unable to perform so that the District can then determine whether the employee is unable to perform one or more essential functions of the employee's position.

29 CFR § 825.308

Except as provided in 29 CFR § 825.308, the District may request recertifications for leave taken because of an employee's own serious health condition or the serious health condition of a family member no more often than every thirty (30) days and only in connection with an absence by the employee. As part of the information allowed to be obtained on recertification, the District may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.

29 CFR § 825.309

The District may require that employee's leave because of a Qualifying Exigency be supported by a certification in accordance with 29 CFR § 825.309. The District should utilize the U.S. Department of Labor Wage and Hour Division **Form WH-384** for such certifications to ensure that proper requests and certifications are provided.

29 CFR § 825.310

The District may require that employee's leave to care for a covered service-member with a serious injury or illness be supported by a certification in accordance with 29 CFR § 825.310. The District should utilize the U.S. Department of Labor Wage and Hour Division **Form WH-385** (for current servicemembers) or **Form WH-385-V** (for veterans) for such certifications to ensure that proper requests and certifications are provided, except where the regulations deem an invitational travel order (ITO) or invitational travel authorization (ITA) to be sufficient..

29 CFR § 825.305

The District must give notice of a requirement for certification each time a certification is required. The employee must provide the requested certification to the District within fifteen (15) calendar days after the District's request, if practicable. The employee must provide a complete and sufficient certification to the District. The District shall advise an employee whether the District finds a certification incomplete or insufficient, and shall state in writing what additional information is necessary to make the certification complete and sufficient. The employee shall have seven (7) calendar days to cure any such deficiency, or more if seven (7) calendar days is not practicable under the particular circumstances despite the employee's diligent good faith efforts.

29 CFR § 825.311

An employee on FMLA leave shall report to the District periodically on the employee's status and intent to return to work. If the amount of needed leave changes from that originally anticipated, the employee shall provide the District reasonable notice (*i.e.*, within two (2) business days) of the changed circumstances when foreseeable.

29 CFR § 825.312

It is the District's uniform policy that employees who wish to return to work after a leave due to the employee's own serious health condition that made the employee unable to perform the employee's job, must present a fitness-for-duty certification that the employee is able to resume work. (In the case of intermittent or reduced schedule leave, fitness-for-duty certifications are only required as set forth in 29 CFR § 825.312(f).) The District may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. In order to require such a certification, the District must provide the employee with a list of the essential functions of the employee's job no later than the time of the designation notice and must indicate in the designation notice that the fitness-for-duty certification must address the employee's ability to perform those essential functions

H. Documenting Family Relationships.

29 CFR § 825.122(k)

In order to confirm, a family relationship, the District may require an Eligible Employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, etc. The District is entitled to examine docu-

mentation such as a birth certificate, etc., but the employee is entitled to the return of the official documents submitted for this purpose.

I. Right to Reinstatement at Conclusion of Leave.

29 CFR §§ 825.214 through 825.216, 825.604

On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. However, an employee has no greater right to reinstatement or to other benefits and conditions of employment, and if the employee had been continuously employed during the FMLA leave period.

J. Effect of Other Laws.

29 CFR §§ 825.701, 825.702

Whenever any applicable state or federal law other than FMLA affects employee leave rights, the District shall provide leave under whichever statutory provision provides the greater rights to employees.

5. Special Circumstances

Notwithstanding any other provisions of this policy:

A. Spouses Who Both Work for the District.

29 CFR §§ 825.120(a)(3), 825.121(a)(3), 825.201(b)

Spouses who are both employed by the District and are Eligible Employees are limited to a combined total of twelve (12) weeks of leave during a Twelve-Month Benefit Period (rather than twelve (12) weeks each) if the leave is taken—

1. for the birth of the employee's child or to care for the child after birth;
2. for placement of a child with the employee for adoption or foster care or to care for the child after placement; or
3. to care for the employee's parent with a serious health condition.

Where the spouses both use a portion of the total twelve (12) week FMLA leave entitlement for the above reasons, the spouses would each be entitled to FMLA leave for any other General Qualifying Reasons in an amount equal to the difference between twelve (12) weeks and the amount he or she has taken individually.

29 CFR §§ 825.120(a)(4) through (6), 825.121(a)(4)

Note that the above limitation does not apply when leave is taken—

a. by the expectant mother for incapacity due to pregnancy or for prenatal care;

b. by the mother for her own serious health condition following the birth of the child;

c. when needed to care for a pregnant spouse who is incapacitated, to care for her during her prenatal care, or to care for her following the birth of a child if she has a serious health condition; or

d. when needed to care for their child with a serious health condition.

29 CFR § 825.127(f)

Further, spouses who are both employed by the District and are Eligible Employees are limited to a combined total of twenty-six (26) work weeks of leave during any Twelve-Month Military Caregiver Period,(rather than twenty-six (26) weeks each) if the leave is taken—

i. for the birth of the employee's child or to care for the child after birth;

ii. for placement of a child with the employee for adoption or foster care or to care for the child after placement;

iii. to care for the employee's parent with a serious health condition; and/or

iv. for Military Caregiver Reasons.

B. Instructional Employees.

The rules of this Part 5(B) only apply to Instructional Employees.

29 CFR §§ 825.601, 825.603(a)

1. *Limitations on Intermittent and Reduced Schedule Leave.*

Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement.

If an eligible Instructional Employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered servicemember, 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 District may require the employee to choose either to:

a. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment. "Periods of a particular duration" means a block(s) of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave. The entire period of leave taken will count as FMLA leave; or

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

29 CFR § 825.602

2. *Limitations on Leave Near the End of an Academic Term.*

If an Instructional Employee begins leave *more than* five (5) weeks before the end of a school year or a semester, the District may require the employee to continue taking leave until the end of the school year or semester if:

a. The leave will last at least three (3) weeks, and

b. The employee would return to work during the three (3) week period before the end of the school year or semester.

If an Instructional Employee begins leave *during* the five (5) week period before the end of a school year or a semester because of the birth of the employee's child, the placement of a child for adoption or foster care with the employee, to care for a spouse, child, or parent with a serious health condition, or to care for a covered servicemember, the District may require the employee to continue taking leave until the end of the school year or semester if:

i. The leave will last more than two (2) weeks, and

ii. The employee would return to work during the two (2) week period before the end of the school year or semester.

If an Instructional Employee begins leave *during* the three (3) week period before the end of a school year or a semester, the District may require the employee to continue taking leave until the end of the school year or semester if the leave will last more than five (5) working days.

29 CFR § 825.603(b)

However, if the employee is required to take leave until the end of a school year or semester, only the period of leave until the employee is ready and able to return to work shall be charged against the employees FMLA leave entitlement. The District shall maintain the employee's group health insurance and restore the employee to the same equivalent job at the conclusion of the leave.

C. Key Employees.

29 CFR §§ 825.216(b), 825.218

The District may deny job restoration to a Key Employee if such denial is necessary to prevent substantial and grievous economic injury to the operations of the District. The *restoration* of the employee to employment must be the cause of the substantial and grievous, economic injury, not the *absence* of the employee.

29 CFR § 825.219

If the District believes that reinstatement may be denied to a Key Employee, the District must give certain written notices to the employee as described in 29 CFR § 825.219.

29 CFR §§ 825.209(g), 825.219(c), (d)

If a Key Employee does not return from leave when notified by the District that substantial or grievous economic injury will result from his or her reinstatement:

1. The employee's entitlement to group health plan benefits continues, unless and until the employee advises the District that the employee does not desire restoration to employment at the end of the period, or the FMLA leave entitlement is exhausted, or reinstatement is actually denied; and

2. The employee is still entitled to request reinstatement at the end of the leave period. The District must then again determine whether there will be substantial and grievous economic injury from reinstatement, based on the fax at that time. If it is determined that substantial, grievous economic injury will result, the District shall notify the employee in writing (or certified mail) of the denial of restoration.