

FAMILY AND MEDICAL LEAVE ACT

It is the policy of the Lyon County School District to comply with the Family and Medical Leave Act (FMLA). All eligible District employees are covered by the FMLA. District employees must meet all of the FMLA eligibility requirements.

FAMILY AND MEDICAL LEAVE ACT - ADMINISTRATIVE REGULATIONS

As a public employer, the District is covered under the Family and Medical Leave Act (FMLA), will comply with the requirements of the FMLA, and will advise employees if they meet all the FMLA eligibility requirements. The District must provide employees Form Rights and Responsibilities Under the Family and Medical Leave Act and is also required to post, and keep posted, notice Your Employee Rights Under the Family and Medical Leave Act in a conspicuous place that can readily be seen by employees and applicants alike, even if no employees are eligible.

1. Eligibility

Employees who have been employed by the District for a total of twelve (12) months and have worked for the District at least one thousand two hundred fifty (1,250) hours during the preceding 12-month period and are employed at a work site where fifty (50) or more employees work for the District within seventy-five (75) surface miles of that work site are eligible for FMLA leave. Employees at a rural school are not eligible for FMLA leave if that rural school has fewer than fifty (50) employees and there are no other schools within the District's jurisdiction within seventy-five (75) surface miles. When the 1,250 hours are calculated, the hours an employee was on leave, even if that leave was paid, do not count toward the 1,250 hours worked. However, an employee who has a military service obligation will be credited with the hours of service that would have been performed, but for the period of military service. The required 12 months of employment need not be consecutive. There may be a break in service as long as it does not exceed seven (7) years. There is an exception to the 7-year condition for USERRA-covered military service or written agreements. All employees meeting the above qualifications qualify for FMLA, regardless of their employment status.

2. Compensation During Leave

FMLA leave will be unpaid leave unless the employee has accrued paid leave and is otherwise eligible to use the leave. An employee on FMLA leave must use all accrued paid sick (if it qualifies under the District's sick leave use requirements), annual, compensatory time, and personal leave concurrently with FMLA leave.* (See the applicable collective bargaining agreement for any alternate provisions which may apply.) When substituting accrued paid leave, the employee must comply with the District's procedural requirements, terms, and conditions of the *Paid Leave* policy as appropriate; the remainder of the leave period will then consist of unpaid FMLA leave. Employees must be made aware that they are required to use sick, annual, compensatory time, and personal leave as appropriate when they are provided the Notice of Eligibility & Rights and Responsibilities Under the Family and Medical Leave Act form.

**When an employee is receiving Temporary Total Disability (TTD) benefits under workers' compensation, the employee may choose to substitute paid leave concurrently if available to supplement the portion of the employee's pay not covered by Workers' Compensation (see LCSD Board Policy GBCC: Workers' Compensation).*

3. Block of Time, Intermittent or and Reduced-Schedule Leave

When medically necessary (as distinguished from voluntary treatments and procedures) or for any qualifying exigency or caregiver leave, leave may be taken on an intermittent or reduced-schedule basis. Leave for bonding with a healthy newborn or placement of a healthy child for adoption or foster care is not considered medically necessary and, therefore, may not be taken on a reduced schedule or intermittent basis unless agreed to by the District. Employees needing intermittent leave or reduced-schedule leave must make a reasonable effort to schedule their leave so as not to unduly disrupt the District's operations. If leave is foreseeable, the District may require an employee on intermittent leave to temporarily transfer to an available alternative position for which the employee is qualified, if the position has equivalent pay and benefits and better accommodates the employee's intermittent or reduced-schedule leave. Intermittent leave and reduced-schedule leave reduces the 12-week entitlement only by the actual time used. When an employee who was transferred no longer needs intermittent or reduced schedule leave, the employee will be placed in the same or equivalent position held prior to when the leave commenced.

An employee may take FMLA leave in a block of time, on an intermittent basis, or on a reduced schedule basis, as explained below.

1. "Block" FMLA leave is leave for a continuous period of time. Such leave may be taken for any of the reasons permitted by the FMLA.
2. "Intermittent" leave means leave taken in separate periods of time for a single qualifying FMLA reason and may include periods of leave ranging from an hour or more to several weeks. For example, intermittent leave may include (a) leave taken for a partial or full workday for scheduled medical appointments, or (b) leave taken on an occasional or "as needed" basis due to episodic flare-ups of a chronic condition.
3. "Reduced Schedule" leave is leave that reduces the employee's usual number of scheduled work hours per workday or per workweek for some period of time. For example, an employee may need to work a reduced schedule for a set number of weeks while recovering from a surgical procedure.

Intermittent or reduced schedule leave may be taken (a) when medically necessary for an employee's or covered family member's serious health condition, or for a covered servicemember's serious illness or injury, and (b) the need for leave can best be accommodated through an intermittent or reduced schedule leave. More specifically, FMLA leave may be taken intermittently or on a reduced schedule basis.

NOTE: FMLA leave that is taken for a period that ends with the school year and begins the next semester is considered consecutive rather than intermittent leave. The District will not count the period during the summer vacation when the employee would not have been required to report for duty against the employee's FMLA leave entitlement.

4. Special Rules for Instructional Employees

The following applies only to instructional employees such as licensed educators and classified instructional specialists whose principle function is to teach and instruct students in a class, small group, or individual setting. It does not apply to teacher assistants, cafeteria workers, counselors, maintenance workers, bus drivers, or other non-instructional employees.

a. Intermittent or Reduced-Schedule Leave

If intermittent leave or reduced-schedule leave is foreseeable and the employee would be on leave for more than 20% of the total number of working days covered by the leave period, the District may require the employee to choose either to take the leave for a period of particular duration, not greater than the duration of the planned treatment, or to transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates the period of leave than does the employee's regular position.

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. Employees who would be on leave for less than 20% of the total number of working days covered by the leave period are not eligible for transfer to an alternative position.

b. Breaks Between Semesters

When any school employee uses leave for a period that ends with the school year and begins the next semester, the employee is using leave consecutively. The leave is not intermittent. The period during summer vacation when the employee would not have been required to report for duty is not leave from work and is not counted against the

employee's FMLA leave entitlement. The employee must be provided with their benefits over the summer break that they would normally receive if they had been working at the end of the school year.

c. Leave Taken Near the End of Academic Term

Instructional employees who begin FMLA leave near the end of an academic term may, in the circumstances described below, be placed by their employer on leave that extends beyond their requested time off to the end of the school term. "Academic term" means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. A school may not have more than two academic terms each year for purposes of the FMLA.

If an employee is required to continue leave until the end of an academic term under the employer's application of this rule, the extended leave period does not count against the number of weeks the employee has available to use FMLA leave, and the employer may not count the employee's time off against them for attendance or other purposes. Additionally, the employee has the right to continued group health insurance during the leave extension. The employee also has the right to be restored to the same or equivalent job, including equivalent benefits, at the end of the leave extension.

When instructional employees use FMLA leave near the end of an academic term, different variations of the requirement to extend FMLA leave protection apply depending on when the leave begins:

- If leave begins more than five weeks before the end of a term. An instructional employee's leave may be extended to the end of the term when their leave begins more than five weeks before the end of the term only if the leave will last at least three weeks, and the employee would return to work during the three-week period before the end of the term.
- If leave begins during the five-week period before the end of a term. An instructional employee's leave may be extended to the end of the term when their leave begins during the five-week period before the end of the term, only if the leave is for the birth or placement of a child or the care of a family member or covered servicemember and will last more than two weeks, and the employee would return to work during the two-week period before the end of the term.
- If leave begins during the three-week period before the end of a term. An instructional employee's leave may be extended to the end of their term when their leave begins during the three-week period before the end of a term, only if the leave is for the birth or placement of a child or the care of a family member or covered servicemember, and the leave will last more than five working days.

Chart: When Special Rules for FMLA leave near the end of an academic term apply.

LEAVE REASON	START DATE	DURATION	RETURN TO WORK
1 Any FMLA-qualifying reason	Begins with more than 5 weeks of the term remaining, and	Lasts at least 3 weeks, and	The employee would return to work in the 3-week period before the end of the term.
2 Birth/placement of a child, care of a spouse, child, or parent with a serious health condition, or care of a covered servicemember, and ,	Begins during the final 5 weeks before the term ends, and	Lasts more than 2 weeks, and	The employee would return to work in the 2-week period before the end of the term.
3 Birth/placement of a child, care of a spouse, child, or parent with a serious health condition, or care of a covered servicemember, and ,	Begins during the final 3 weeks of the term, and	Lasts more than 5 working days.	The employee would return to work at some point before the end of the term.

If the employee is required to remain on leave until the end of the term, the District may charge only the period of time until the employee is able to return to work against the leave entitlement.

The District will provide instructional employees who are on FMLA leave at the end of the school year any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

5. Duration of and Reasons for Leave

Any eligible employee, as defined above, may be granted a total of twelve (12) weeks or equivalent of unpaid FMLA leave (which can run concurrent with paid leave) during a rolling 12-month period (see exception for *Military Caregiver Leave* section below). This period is measured backward from the date an employee uses any FMLA leave. A “week” is defined as a work week, regardless of the number of days the employee normally works. Twelve (12) weeks does not entitle the employee working three (3) days a week to sixty (60) leave days, but rather twelve (12) weeks. FMLA leave may be granted for the following reasons:

- a. The birth of the employee’s child and in order to care for the newborn child;
- b. The placement of a child with the employee for adoption or foster care;
- c. To care for the employee’s spouse, child, or parent who has a serious health condition;

- d. An employee's own serious health condition that prevents the employee from performing one or more of the essential functions of their job. Serious health conditions may include conditions resulting from job-related injuries and/or illnesses, including time an employee is receiving lost time compensation; or
- Due to a qualifying exigency arising when an employee's spouse, son, daughter, or parent is a military member on covered active duty or has been notified of an impending call to covered active duty.

6. Limitation of Leave

The entitlement to FMLA leave for the birth or placement of a child for adoption or foster care will expire twelve (12) months from the date of the birth or placement. If both an employee and the employee's spouse are employed by the District, their combined time off may not exceed twelve (12) weeks during any 12-month period for the birth, adoption, or foster care of a child, or the care of a parent with a serious health condition. Each spouse is, however, eligible for the full twelve (12) weeks within a 12-month period for one's own serious health condition, or to care for a son, daughter, or spouse with a serious health condition.

Employees may not take more than a combined total of twelve (12) weeks in a 12-month period for all FMLA qualifying reasons listed above in the *Reasons for Leave* section.

7. Military Caregiver Leave

- Policy
An eligible employee, as defined in the *Eligibility* section above, may be granted a total of twenty-six (26) weeks of unpaid FMLA leave (which can run concurrent with paid leave) during a 12-month period to provide caregiver leave for a seriously ill or injured covered service member or veteran who is the employee's spouse, son, daughter, parent, or next of kin. This period is always measured forward from the date an employee takes FMLA leave to care for the covered service member or veteran and ends twelve (12) months after that date.
- Limitations of Leave
Employees cannot take more than a combined total of 26 weeks for military caregiver leave or because of other FMLA qualifying reasons as provided in the *Reasons for Leave* section above. A husband and wife both working for the same District are limited to a combined total of 26 weeks of FMLA military caregiver leave.

- **Notice of Leave**

An employee intending to take FMLA leave because of an expected birth, placement for adoption or foster care, a planned medical treatment for a serious health condition of the employee or family member, or the planned medical treatment for serious illness or injury of a covered service member/veteran shall provide notice for such leave at least thirty (30) days before the leave is to begin. If a requested leave will begin in less than thirty (30) days, the employee must give notice to their immediate supervisor as soon as the necessity for the leave is known. Reasonable advance notice is required for all leaves, even if the event necessitating the leave is not foreseeable. If an employee gives less than thirty (30) days' notice, the District may require an explanation. For foreseeable leave due to qualifying exigency, notice must be provided as soon as practicable.

Within five (5) business days (absent extenuating circumstances) of receiving notice that 1) an employee requests to use FMLA leave, or 2) the District acquires knowledge that a leave may be for a FMLA-qualifying reason, the District will provide the employee a Notice of Eligibility & Rights and Responsibilities, if applicable. Completion of this form will designate if an employee is eligible for FMLA or if an employee is not eligible, the reason(s) why they are not eligible. The form will designate if the employee is required to obtain certification related to medical conditions and/or required family relationships. The District may require the use of FMLA leave for any absence which would otherwise qualify as FMLA leave, even if no formal application for such leave was made by the employee, provided the employee is notified.

8. Certification of Leave

- **Serious Health Condition**

A request for leave based on the serious health condition of the employee or the employee's spouse, child, or parent must be supported by the completion of the Certification of Health Care Provider for Employee's Serious Health Condition form or Certification of Health Care Provider for Family Member's Serious Health Condition form completed by the health care provider.

The Certification of Health Care Provider form must be completed and returned by the employee within 15 calendar days, absent extenuating circumstances.

- **Exigency Leave**

Employees requesting FMLA leave for qualifying exigency are required to complete the Certification for Military Family Leave for Qualifying Exigency form and provide a copy of the military member's active-duty orders or other documentation issued by the military

that indicates that the military member is on covered active duty or call to covered active duty status.

- **Caregiver Leave**

Employees requesting FMLA leave for military caregiver leave are required to complete the Certification for Serious Injury or Illness of a Current Servicemember for Military Caregiver Leave form or Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave form within fifteen (15) calendar days, absent extenuating circumstances. Employees may also submit invitational travel orders (ITOs) or invitational travel authorizations (ITAs) issued to any family member in lieu of the aforementioned forms.

- **Incomplete or Insufficient Certification (cure period)**

If a certification is incomplete or insufficient, the employee will be given seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) to cure any such deficiency. If the deficiencies specified by the District are not cured in the resubmitted certification, the District may deny the taking of FMLA leave. A certification that is not returned to the District is not considered incomplete or insufficient but constitutes a failure to provide certification.

- **Clarification of Authentication of Certification**

The District may contact the employee's health care provider for the purpose of clarification or authentication after giving the employee an opportunity to clarify specific discrepancies. Only the Executive Director of Human Resources may contact the health care provider.

- **Second or Third Opinions**

If the District questions the validity of the certification, the District may require, at its expense, that the employee obtain a second opinion from a health care provider designated by the District. If the second opinion conflicts with the original opinion, the District may require, at its expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the District and the employee. This third opinion will be considered final and binding on both parties.

Second and third opinions are not permitted for leave to care for a covered service member when the certification has been completed by a Department of Defense or Department of Veteran Affairs health care provider. However, second and third opinions are permitted when the certification has been completed by other health care providers as provided for by law.

- **Recertification**

The District may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless:

The minimum duration of leave anticipated by the original certification is more than 30 days, in which the District may require the employee to recertify that the original medical condition still exists. The employee requests an extension of leave, the circumstances described by the original certification have changed significantly, or the District receives information casting doubt upon the continuing validity of the certification.

Recertifications are not permitted for leave to care for a covered service member.

- **Annual Medical Certification**

The District may require the employee to provide new medical certification, not recertification, for the first FMLA-related absence in a new 12-month leave year.

9. Designation Notice

Within five (5) business days (absent extenuating circumstances) of receipt of all required information, the District will make a determination if the employee's request for leave is for an FMLA-qualifying reason. The District will complete the Designation Notice form indicating if leave is approved or not and provide it to the employee.

If the District cannot make a determination from the information provided, they will use this form to:

- Indicate the information presented is incomplete or insufficient and provide the employee seven (7) calendar days to provide complete information (cure period).
- Provide notice to an employee if a second or third medical certification is required.

The District may also use this form to designate a fitness-for-duty certificate which will be required prior to returning to work.

10. Benefits Coverage During Leave

During a period of FMLA leave, an employee will be retained on the District's health plan under the same conditions that would apply if the employee were not on FMLA leave. To continue health coverage, the employee must continue to make any contributions that they would otherwise be required to make. Failure of the employee to pay their share of the health insurance premium may result in loss of coverage.

If the employee fails to return to work after the expiration of the FMLA leave, the employee may be required to reimburse the District for payment of health insurance premiums during the leave unless the reason the employee cannot return is due to circumstances beyond the employee's control per 29 CFR 825.213.

An employee is not entitled to the accrual of any seniority or employment benefits during any unpaid leave. An employee who takes FMLA leave will not lose any seniority or employment benefits that accrued before the date the leave began and will be entitled to any unconditional pay increases, such as cost of living increase granted to all employees during the FMLA leave period.

11. Outside Employment

An employee may not accept other employment during an FMLA absence if the job conflicts with the reason the employee is on FMLA leave; e.g., an employee is on FMLA leave due to a back injury and accepts a job requiring heavy lifting. All other requirements of LCSD Board Policy GBBQ: Outside Employment apply.

An employee who is on FMLA leave may not engage in employment for any other employer or engage in self-employment while on leave. In addition, an employee on FMLA leave for their own serious health condition may not engage in leisure activities or personal travel (e.g., vacation) that is inconsistent with the medical condition that incapacitates the employee from working his or her job. If the employee is using available paid leave that is running concurrently with FMLA leave for their own serious health condition, they must remain in the general vicinity of their place of residence during the period of such leave. Dishonesty related to such activities (i.e., work or personal travel) are violations of this policy.

An employee on FMLA leave for a continuous block of time may not be required to perform work for the school district. However, it is permissible for the school district to contact an employee while the employee is on FMLA leave in order to obtain needed information related to the employee's job assignments or for continuity of District operations. An employee may not volunteer to perform work during a continuous block of FMLA leave.

12. Periodic Reporting

Any employee on FMLA leave must notify the District periodically of their status and intention to return to work. The District has the authority to determine how often the employee must provide this notification.

13. Change in Duration of Leave

- **Return Prior to Expiration**
If an employee wishes to return to work prior to the expiration of the approved FMLA leave period, they must notify the administrator or manager/supervisor within two business days prior to the employee's planned return and comply with the provisions of the *Return from Leave* section below.
- **Request an Extension of Leave**
An employee who needs an extension of FMLA leave must submit a request for an extension as soon as the employee realizes that they will not be able to return at the expiration of leave period in writing to the District. Any additional time requested beyond the FMLA 12-week period (or 26-week period for caregiver leave) will not be considered as FMLA. Rather, such time, if approved by the District, will be characterized as either paid or unpaid leave, thereby ending the District's reinstatement obligations included in the *Return from Leave* section. (See the applicable CBA for alternate provisions which may apply.)
- **Return from Leave**
Upon returning to work, an employee on FMLA leave will be restored to their most recent position or to a position with equivalent pay, benefits, and other terms and conditions of employment. The District cannot guarantee that an employee will be returned to their original position. The District will determine whether a position is an "equivalent position" as defined by FMLA. Employee's right to restoration, however, ceases at the end of the applicable 12-month FMLA leave year.

Employees may be required to provide a fitness-for-duty certification (if indicated on the designation notice) specifically addressing the employee's ability to perform the essential functions of the job, prior to returning to work if the FMLA leave of absence was due to the employee's own serious health condition. Employees required to present a fitness-for-duty certification may be delayed in restoration to employment until certification is provided. Second and third opinions are not allowed on a fitness-for-duty certification.

Key employees may be denied job restoration if such denial is necessary to prevent substantial and grievous economic injury to the operations of District and the employee was given written notice that they were considered a key employee at the time notice of FMLA leave was given or when the leave commenced.

14. Failure to Return from Leave

LYON COUNTY SCHOOL DISTRICT

BOARD POLICY

GBCB

Failure of an employee to return to work upon the expiration of an FMLA leave of absence will subject the employee to disciplinary action, up to and including termination, unless the District has granted an additional (paid or unpaid) extension.

(Note: Refer to the District's other *leave policies*.) Nothing in this policy limits the District's obligations of reasonable accommodation under the Americans with Disabilities Act (ADA), as amended.

15. Abuse of FMLA

An employee who fraudulently obtains FMLA leave from the District is not protected by the FMLA's job restoration or maintenance of health benefits provisions. In addition, the District will take all appropriate disciplinary action, up to and including termination, against an employee due to such fraud.