

## **FAMILY AND MEDICAL LEAVE ACT (FMLA)**

**SUBJECT: FAMILY AND MEDICAL LEAVE**

### **I. Introduction**

The Patchogue-Medford Union Free School District (the “District”) hereby adopts a Family and Medical Leave Policy (the “Policy”) for eligible employees. The Board of Education, in accordance with the Family and Medical Leave Act of 1993 (“FMLA”), gives “eligible” employees of the District the right to take a leave for a period of up to twelve (12) work weeks in a twelve-month period, as determined by the District, under certain family circumstances and for certain medical reasons. While this policy provides an overview of coverage, leave entitlements, rights, and rules under the FMLA, employees should consult the FMLA and accompanying federal regulations for more detail.

### **II. Relation of Policy to Collective Bargaining Agreements**

To the extent a collective bargaining agreement provides greater family and medical leave rights to an employee than the rights established under this Policy, the rights granted to the employee in the collective bargaining agreement will govern the family and medical leave of the employee. [If an employee is entitled to family and medical leave under this Policy and under a collective bargaining agreement, the employee’s family and medical leave will be deemed to have been taken concurrently under both this Policy and the collective bargaining agreement.]

### **III. Calculating the “12 month-period” in which the 12 weeks of leave entitlement occurs**

The District will compute the “12-month period” in which the 12 weeks of leave entitlement occurs on a rolling basis measured backward from the date an employee uses leave under this Policy. Under this “rolling” 12-month period that an employee takes leave under the terms of this Policy, the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning March 1, 1994, four weeks beginning July 1, 1994 and four weeks beginning January 1, 1995, the employee would not be entitled to any additional leave until March 1, 1995. However, on March 1, 1995, the employee would be entitled to four weeks of leave, on July 1, 1995, the employee would be entitled to an additional four weeks, etc.

### **IV. Eligible Employees**

Employees are “eligible” if they have been employed by the District for at least twelve (12) months and for at least 1,250 hours of service during the previous twelve-month period. Full-time teachers are deemed to meet the 1,250-hour test, provided the District has employed them for at least twelve (12) months. However, a break in employment for military service (i.e., call to active duty) should not interrupt the twelve (12) month/1,250 hours of employment requirement and should be counted toward fulfilling this prerequisite. The law applies to both full-time and part-time employees.

### **V. Leave by a Husband and Wife or Domestic Partner Employed by the School District**

A husband and wife or Domestic Partner who are eligible for leave under this Policy and are both employed by the District are permitted to take only a **combined total** of 12 weeks of leave during a 12-month period if the leave is taken to care for the employee's parent with a serious health condition, for the birth of the employee's son or daughter or to care for the child after the birth, or for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement.

**Family and Medical Leave Act (FMLA) (Continued)****Leave by a Husband and Wife or Domestic Partner Employed by the School District (Continued)**

Where the husband and wife/Domestic Partner both use a portion of the total 12-week leave under this Policy for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the husband and wife/Domestic Partner would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse/Domestic Partner took 6 weeks of leave for the birth of a child, each could later use an additional 6 weeks due to his or her own serious health condition or to care for a child with a serious health condition.

**VI. Reasons for which FMLA leave may be taken**

Qualified employees may be granted leave for one (1) or more of the following reasons:

- a) The birth of a child and care for the infant;
- b) Adoption of a child and care for the infant;
- c) The placement with the employee of a child in foster care;
- d) To care for a spouse, child or parent (not “in-law”) who has a “serious health condition”
- e) A “serious health condition” of the employee, as defined by the FMLA, that prevents the employee from performing his/her job. What constitutes a “serious health condition” under the FMLA is discussed in more detail below
- f) To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member. (See section titled “Military Family Leave Entitlements” below)
- g) Because of any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation. (See section titled “Military Family Leave Entitlements” below)

**VII. Serious Health Condition**

For purposes of FMLA, a “serious health condition” entitling an eligible employee to FMLA leave is defined as an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

- (1) A period of incapacity of more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:
  - (a) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider; or
  - (b) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

**Family and Medical Leave Act (FMLA) (Continued)**  
**Serious Health Condition (Continued)**

- (2) Any period of incapacity due to pregnancy or for prenatal care
- (3) Chronic conditions, as defined in the FMLA and accompanying federal regulations
- (4) Permanent or long-term conditions, as defined in the FMLA and accompanying federal regulations
- (5) Conditions requiring multiple treatments, as defined in the FMLA and accompanying federal regulations.

**VIII. Military Family Leave Entitlements**

**Military Caregiver Leave**

An eligible employee who is the spouse, son, daughter, parent or next of kin (defined as the nearest blood relative) of a “covered service member” who is a member of the Armed Forces on the temporary disability retired list or who is recovering from a service-connected serious illness or injury sustained or aggravated while on active duty that may render the covered service member medically unfit to serve, or a veteran who has a qualifying injury or illness incurred during or aggravated by service within the last five (5) years that manifested itself before the covered service member became a veteran, is entitled to up to twenty-six (26) weeks of leave in a single 12-month period to care for the service member. This Military Caregiver Leave is available during a single 12-month period during which an eligible employee is entitled to a combined total of twenty-six (26) weeks of all types of FMLA leave. Military Caregiver Leave may be combined with other forms of FMLA-related leave providing a combined total of twenty-six (26) weeks of possible leave for any single twelve (12) month period; however, the other form of FMLA leave when combined can not exceed twelve (12) of the twenty-six (26) weeks of combined leave.

Military Caregiver Leave has a set “clock” for calculating the twelve (12) month period for when FMLA leave begins, and tolling starts at the first day of leave taken.

The term “covered service member” means:

- 1. A member of 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 veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.

**“Qualifying Exigency” Leave / Call to Active Duty**

An “eligible” employee is entitled to FMLA leave because of “a qualifying exigency” arising out of circumstances where the spouse, son, daughter, or parent of the eligible employee is serving in the regular Armed Forces who is deployed to a foreign country or in either the National Guard or the Reserves and is on active duty during a war or national emergency called for by the President of the United States or

**Family and Medical Leave Act (FMLA) (Continued)**  
**Military Family Leave Entitlements (Continued)**

Congress, or has been notified of an impending call to active duty status, in support of a contingency operation.

A “qualifying exigency” related to families of the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve personnel on (or called to) active duty to take FMLA protected leave to manage their affairs is defined as any one of the following reasons:

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; and
8. Any additional activities where the employer and employee agree to the leave.

In any case in which the necessity for leave due to a qualifying exigency is foreseeable; the employee shall provide such notice to the employer as is reasonable and practicable. This military-related leave is for up to twelve (12) weeks during a single 12-month period. Leave may be taken intermittently or on a reduced leave schedule.

**IX. Applying for FMLA Leave: Request Procedure, Advance Notice Requirements, Medical Certification**

**Request for Leave**

In all cases, an employee requesting leave under this Policy must complete the attached “Certification of Health Care Provider for Employee’s Serious Health Condition (Family and Medical Leave Act), Notice of Eligibility and Rights & Responsibilities (Family and Medical Leave Act), and Designation Notice (Family and Medical Leave Act)” and return it to the Office for Human Resources. The completed application must state the reason for the leave, and the starting and ending dates of the leave. The Assistant Superintendent for Human Resources will review all supporting documentation and make a recommendation to the Superintendent of Schools.

**Use of Paid Leave Days for Unpaid Leaves of Absence**

At the Board of Education’s or employee’s option, certain types of paid leave may be required or permitted to be substituted for unpaid leave, as delineated below. However, an employee is not entitled to use accrued sick leave days when he/she would not otherwise be able to use sick leave days under the terms of his/her collective bargaining agreement. Therefore, an employee will be required to use his/her accrued sick leave days concurrently with a leave taken for his/her own documented serious health condition. An employee may request a conversion of accrued family, personal, and/or vacation leave days for his/her own documented serious health condition when

**Family and Medical Leave Act (FMLA) (Continued)****Applying for FMLA Leave: Request Procedure, Advance Notice Requirements, Medical Certification (Continued)**

he/she has depleted his/her sick leave days. Requests for a conversion of time must be made in writing to the Assistant Superintendent for Human Resources. However, employees taking a leave of absence to care for a spouse, child, or parent with a serious health condition may only request to utilize their accrued family, personal, and/or vacation leave days; sick leave days will not be converted for this purpose.

**Advance Notice Requirements**

The Board of Education has a right to, and the employee must provide, 30 days advance notice of foreseeable leave from the employee where practicable. An employee intending to take family or medical leave because of an expected birth or placement, or because of a planned medical treatment, must submit an application for leave at least thirty (30) days in advance. Employees with unforeseen needs requiring a leave must give notice to the Superintendent as soon as the necessity for the leave arises.

**Medical Certification**

The District can require an employee requesting a medical leave to provide certification from a doctor that outlines the basis for the leave and its anticipated duration. If the District doubts the validity of the doctor's certification, the law provides a method for obtaining a second, and, if necessary, a third medical opinion. The District may reinstate the medical certification process with the first absence in a new 12-month leave year. The District may also require medical certification if the employee is unable to return from leave because of a serious health condition.

In addition, the Board may require an employee to submit certification from a health care provider to substantiate that the leave is due to the "serious health condition" of the employee or the employee's immediate family member. Under no circumstance should the employee's direct supervisor contact any health care provider regarding the employee's condition. All contact in this manner is to be made by a health care provider (employed at the District) a human resource professional, a leave administrator or a management official. If the medical certification requested by the District is found to be deficient, the District will indicate where the errors are, in writing, and will give the employee seven (7) days to provide corrected materials to cure any deficiency prior to any action being taken.

**Procedures for Providing Proper Medical Certification**

- a) An application for leave based on the serious health condition of the employee or the employee's spouse, child or parent must also be accompanied by the attached "Medical Certification Statement" completed by the applicable health care provider. The certification must state the date on which the health condition commenced, the probable duration of the condition, and the appropriate medical facts regarding the condition.
- b) If the leave is needed to care for a spouse, child or parent, the certification must so state along with an estimate of the amount of time the employee will be needed. If the employee has a serious health condition, the certification must state that the employee cannot perform the functions of his or her job.

**Family and Medical Leave Act (FMLA) (Continued)****Applying for FMLA Leave: Request Procedure, Advance Notice Requirements, Medical Certification**

- c) If the District has reason to doubt the validity of the Medical Certification Statement submitted by an employee, the District may require the employee to obtain a second opinion at the District's expense. The District is permitted to designate the health care provider to furnish the second opinion, but this second opinion cannot be generated by an individual employed on a regular basis by the District.
- d) If the opinions of the employee's and the District's designated health care providers differ, the District may require the employee to obtain certification from a third health care provider, again at the District's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the District and the employee. The District and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider.
- e) Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from the District that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner.
- f) The District may require periodic re-certification by an employee's health care provider when the District, in its discretion, deems re-certification is warranted.

**X. Intermittent and Reduced Schedule Leave under this Policy**

Leave under this Policy may be taken intermittently or on a reduced leave schedule where leave is taken to care for a parent or child with a serious health condition or for an employee's own serious health condition. Leave may also be taken intermittently or on a reduced leave schedule where the leave is taken for a "qualifying exigency" arising out of the fact that a family member is on covered active duty in the Armed Forces, as outlined above and in the FMLA and accompanying regulations, or to care for a covered service member with a serious injury or illness. A pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as for periods of severe morning sickness. When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the District agrees. The District's agreement is not required, however, for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.

- a) The leave taken intermittently or on a reduced leave schedule must be medically necessary. This means that there must be a medical need for leave (as distinguished from voluntary treatments and procedures) and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule.

**Family and Medical Leave Act (FMLA) (Continued)**  
**Intermittent and Reduced Schedule Leave under this Policy (Continued)**

- b) Intermittent leave is taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time, and may include leaves of periods from an hour or more to several weeks. Examples of intermittent leave include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as chemotherapy.
- c) A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per work day. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time. Such a schedule reduction might occur, for example, when an employee is recovering from a serious health condition and is not strong enough to work a full-time schedule.
- d) Employees taking intermittent leave or leave on reduced schedule must attempt to schedule his or her leave so as not to disrupt the District's operations.
- e) If an employee requests intermittent leave or leave on a reduced leave schedule that is foreseeable based on a planned medical treatment, including during a period of recovery from a serious health condition, the District may require the employee to transfer temporarily, during the period that the intermittent or reduced schedule leave 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. Additional rules apply to instructional employees. (See section titled "Special Rules for School District Employees" below).
- f) Transfer to an alternative position may require compliance with any applicable collective bargaining agreement, federal law, and state law. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced schedule leave.
- g) The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The District may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the employee's regular job. The District may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary. For example, an employee desiring to take leave in increments of 4 hours per day could be transferred to a half-time job paying the same hourly rate as the employee's previous job and enjoying the same benefits. The District may not eliminate benefits which otherwise would not be provided to part-time employees; however, an employer may proportionately reduce earned benefits, such as vacation leave, where an employer's normal practice is to base such benefits on the number of hours worked.

**Family and Medical Leave Act (FMLA) (Continued)**  
**Intermittent and Reduced Schedule Leave under this Policy (Continued)**

- h) If an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. For example, if an employee under this Policy who normally works five days a week takes off one day, the employee would use 1/5 of a week of FMLA leave under this Policy. Similarly, if a full-time employee who normally works 8-hour days works 4-hour days under a reduced leave schedule, the employee would use ½ a week of leave each week.
- i) Employees reinstated from an intermittent or reduced schedule leave will be placed in the same or equivalent position that he/she left for the purpose of FMLA, subject, however, to the additional federal regulations applicable to employees of school districts, as discussed in more detail in Section XIII below.

**XI. Maintenance of Benefits During FMLA Leave**

An employee on FMLA leave is entitled to have health benefits maintained while on leave. If an employee was paying all or part of the premium payments prior to leave, the employee will continue to pay his/her share during the leave period. In some cases, the District may recover premiums paid for maintaining an employee's health coverage if the employee fails to return to work from FMLA leave or provide appropriate documentation.

**Provisions Affecting Benefits Coverage During FMLA Leave**

- a) During a period of family or medical leave under this Policy, an employee will be retained on the District's health plan under the same conditions that applied before the leave commenced.
- b) Except as required by the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) and for "key employees" (as discussed in more detail below), the District's obligation to maintain health benefits during leave will cease if and when: the employment relationship would have terminated if the employee had not taken FMLA leave (*e.g.*, if the employee's position is eliminated as part of a nondiscriminatory reduction in force and the employee would not have been transferred to another position); an employee on leave under this Policy informs the District of his or her intent not to return from leave (including at the start of leave if the District is so informed before the leave starts); or the employee fails to return from leave, resigns, is terminated, or the employee continues on leave after exhausting his or her FMLA leave entitlement under this Policy.
- c) If a "key employee" (as discussed in more detail below) does not return from leave when notified by the District that substantial or grievous economic injury will result from his or her reinstatement, the employee's entitlement to health benefits continues unless and until the employee advises the District that the employee does not desire restoration to employment at the end of the leave period, or the FMLA leave entitlement under the Policy is exhausted, or reinstatement is actually denied.



**Family and Medical Leave Act (FMLA) (Continued)**  
**Maintenance of Benefits During FMLA Leave (Continued)**

- d) To continue health coverage while on leave under this Policy, an employee must continue to make any contributions that he or she made to the health plan before taking leave. If leave under this Policy is substantial paid leave, the employee's share of premiums will be paid through normal payroll deductions. If leave under this Policy is unpaid, the employee must pay his or her share of the premiums to the District by the date when the District would make the payroll deduction if the employee were being paid for the leave.
- e) Failure of an employee to pay his or her share of any health insurance premium within 30 days of its due date may result in loss of health coverage. Under certain circumstances, the District may be required to pay the employee's share of the health insurance premium to keep the insurance in effect. If the District pays an employee's share of any health insurance premium, the employee will be liable to and required to reimburse the District for the cost of the premium.
- f) The District may also maintain other benefits on behalf of the employee, e.g., life insurance or disability insurance, by paying the employee's share of such premiums while the employee is on unpaid leave under this Policy. If the District pays an employee's share of any other benefit premium while the employee is on unpaid leave under this Policy, at the conclusion of the leave, the employee will be liable to and required to reimburse the District for the cost of such premiums, whether or not the employee returns to work.
- g) An employee is not entitled to the accrual of any seniority or employment benefits during FMLA leave that would have accrued if not for the taking of leave. An employee who takes leave under this Policy will not lose any seniority or benefits that accrued before the taking of the leave.

**XII. Return to Employment at the End of FMLA Leave**

In most instances, on return from FMLA leave, an employee has a right to return to the same position the employee held when leave commenced or to an equivalent position with equivalent pay, benefits and working conditions. The law states that an employee does not lose accrued employment benefits as a result of the leave, but he/she is not entitled to accrue seniority during the leave period.

Special limitations apply to instructional employees returning from leave near the conclusion of an academic term. Depending on the duration of the leave and the length of time remaining until the end of the school term, the District can require the employee to wait until next term to return. For instructional employees, restoration to a position "shall be made on the basis of established Board policies and practices" and the collective bargaining agreement. For example, the District is free under the law to assign a returning elementary teacher to a different grade from the class he/she taught prior to the leave. (See section titled "Special Rules for School District Employees" below).

**Procedures for Return from FMLA Leave**

- a) An employee must complete the attached "Notice of Intention to Return from Family or Medical Leave" before he or she can be returned to active status. If an employee wishes to return to work prior to the expiration of a leave of absence under this Policy, notification must be given to the Superintendent at least five (5) working days prior to the employee's planned return.

**Family and Medical Leave Act (FMLA) (Continued)**  
**Return to Employment at the End of FMLA Leave (Continued)**

- b) As a condition of restoration, each employee on leave because of a serious health condition must provide a written certification from his or her health care provider that the employee is able to resume working.

**Eligibility for Restoration to Employment**

- a) An employee eligible for FMLA leave is entitled to be returned to the same position the employee held with leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. The District cannot guarantee that an employee will be returned to his or her original position. A determination as to whether a position is an “equivalent position” will be made by the District.
- b) An employee has no greater right to reinstatement than if the employee had been continuously employed during the FMLA leave period under this Policy.
- c) Under certain circumstances, the District may deny job restoration to “key employees.” A “key employee” is a salaried employee eligible to take leave under this Policy who is among the highest paid ten percent of all employees—salaried and non-salaried, eligible and ineligible under this Policy—who are employed by the District.
- d) In order to deny restoration to a key employee, the District must determine that the restoration of the employment will cause substantial and grievous economic injury to the operations of the District.
- e) If the District believes that reinstatement may be denied to a key employee, the District must give written notice to the employee at the time leave under this Policy is requested (or when leave commences under this Policy, if earlier) that he or she qualifies as a key employee. At the same time, the District must also fully inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the District should determine that substantial and grievous economic injury to the District's operations will result if the employee is reinstated from FMLA leave. If such notice cannot be given immediately because of the need to determine whether the employee is a key employee, it shall be given as soon as practicable after receipt of a request for leave (or the commencement of leave, if earlier).
- f) As soon as the District makes a good faith determination, based on the facts available, that substantial and grievous economic injury to its operations will result if a key employee who has requested or is using FMLA leave is reinstated, the District shall notify the employee in writing of its determination, that it cannot deny FMLA leave, and that it intends to deny restoration to employment on completion of the FMLA leave. This notice must be served either in person or by certified mail. This notice must explain the basis for the District's finding that substantial and grievous economic injury will result, and, if leave has commenced, must provide the employee a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.

**Family and Medical Leave Act (FMLA) (Continued)**

**Return to Employment at the end of FMLA Leave (Continued)**

- g) After notice has been given to a key employee that substantial and grievous economic injury will result if the employee is reinstated to employment, an employee is still entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the District's notice. The District must then determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at that time. If it is determined that substantial and grievous economic injury will result, the District must notify the employee in writing (in person or by certified mail) of the denial of the restoration.

**Failure to Return from Leave**

- a) All employees are directed to return to work upon expiration of a family or medical leave of absence unless a written extension is granted or the employees have a right to remain on leave under a collective bargaining agreement. The failure of an employee to return to work upon the expiration of FMLA leave may be treated as a resignation and may lead the District to begin the termination process unless an extension is granted. An employee who requests an extension of FMLA leave due to the continuation, recurrence or onset of her or his own serious health condition, or of the serious health condition of the employee's spouse, child or parent, must submit a request for an extension in writing, to the Superintendent. This written request should be made as soon as the employee realizes that she or he will not be able to return at the expiration of the leave period.
- b) The District may recover its share of health plan premiums (or other benefit premiums) paid by it during a period of unpaid FMLA leave from an employee if the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return to work is due to:
1. The continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member, or a serious injury of a covered service member, which would otherwise entitle the employee to leave under this Policy; or
  2. Other circumstances beyond the employee's control, as contemplated by the FMLA and accompanying federal regulations.
- c) When an employee fails to return to work because of the continuation, recurrence, or onset of a serious health condition of the employee or employee's family member, or a serious injury or illness of a covered service member, thereby precluding the District from recovering its share of health benefit premium payments (and other benefit premium payment) made on the employee's behalf during a period of unpaid FMLA leave, the employee, upon request by the District, must provide medical certification of the employee's or the family member's serious health condition or the covered service member's serious injury or illness. This certification must be provided to the District within 30 days of the District's request. If the District does not receive the certification with 30 days of its request, or the reason for not returning to work does not meet the test of other circumstances beyond the employee's control, the District may recover its share of health benefit premiums (and other benefit premiums) it paid during the period of unpaid FMLA leave.

## **Family and Medical Leave Act (FMLA) (Continued)**

### **XIII. Special Rules Applicable to School District Employees**

Certain special rules apply to employees of the District under the FMLA. These special rules affect the taking of intermittent leave or leave on a reduced schedule, or leave near the end of an academic term (semester), by “instructional employees.”

An “instructional employee” is an employee whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

In addition, special rules that apply to restoration to an equivalent position apply to all employees of the District.

#### **Limitations on Intermittent Leave Taken By Instructional Employees**

FMLA leave that is taken at the end of the school year and resumes at the beginning of the next school year is not regarded as intermittent leave but rather as consecutive leave. The period in the interim (i.e., summer vacation) is not counted against an employee’s FMLA leave entitlement, and the employee must continue to receive any benefits that are customarily given over the summer break.

Intermittent leave may be taken but must meet certain criteria:

- a) If an eligible instructional employee requests 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 service member, or for the employee’s own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20% of the total number of working days over the period the leave would extend, the District may require the employee to choose either to:
  1. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
  2. Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates the recurring periods of leave than does the employer’s regular position.
- b) These rules apply only to a leave involving more than 20 percent of the working days during the period over which the leave extends. For example, if an instructional employee who normally works five days each week needs to take two days of FMLA leave per week over a period of several weeks, the special rules would apply. Employees taking leave which constitutes 20 percent or less of the working days during the leave period would not be subject to transfer to an alternative position. “Periods of a particular duration” means a block, or blocks, 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.

**Family and Medical Leave Act (FMLA) (Continued)**  
**Special Rules Applicable to School District Employees (Continued)**

If an instructional employee does not give required notice of a foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the District may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. In the alternative, the District may require the employee to delay the leave until the notice provision is met. This notice requirement will be no more strict than that required for other employees taking paid or unpaid leave.

If an employee chooses or is required to take leave “for periods of a particular duration” in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

**Leave Taken by Instructional Employees Near the End of the Instructional Year**

There are also special requirements for instructional employees taking leave depending on the leave’s relation to the end of the term. Regular rules apply except in circumstances when:

1. An instructional employee begins leave more than five weeks before the end of a semester. The District may require the employee 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.
2. The 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 a semester. the District may require the employee to continue taking leave until the end of the semester 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 semester.
3. 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 a semester, and the leave will last more than five working days. The District may require the employee to continue taking leave until the end of the semester.

In the case of an employee who is required to take leave until the end of a semester, only the period of leave until the employee is ready and able to return to work shall be charged against the employee’s FMLA leave entitlement. The District has the option not to require the employee to stay on leave until the end of the semester. Therefore, any additional leave required by the District to the end of the semester is not counted as FMLA leave; however, the District shall be required to maintain the employee’s group health insurance and restore the employee to the same or equivalent job including other benefits at the conclusion of the leave.

**Restoration to an Equivalent Position**

The determination of how an employee is to be restored to “an equivalent position” upon return from FMLA leave will be made on the basis of “established school board policies and collective bargaining agreements.” The employee will be advised of restoration rights prior to taking FMLA leave. Policies or collective bargaining agreements will hereafter provide for restoration to an “equivalent position” with equivalent employment benefits, pay, and other terms and conditions of employment.

**Family and Medical Leave Act (FMLA) (Continued)****XIV. FMLA Notice**

A notice which explains the FMLA provisions and provides information concerning the procedures for filing complaints of violations of the FMLA shall be posted in each school building, and a notice of an employee's FMLA rights and responsibilities shall be either placed in the employee handbook of the employer or furnished to each new employee upon hire. The District has five (5) days to supply such notice from the date of hire. Administration is directed to develop regulations to implement this policy, informing employees of their rights and responsibilities under the FMLA.

Family and Medical Leave Act of 1993 (as amended), Public Law 103-3

National Defense Authorization Act of 2008, Public Law 110-181

10 United States Code (USC) 101 (1) (13)

29 Code of Federal Regulations (CFR) Part 825

Health Insurance Portability and Accountability Act of 1996(HIPAA). Public Law 104-191

45 Codes of Federal Regulations (CFR) Parts 160 and 164

Adopted:

June 4, 2012

Revised:

June 24, 2019

**Certification of Health Care Provider for  
Employee's Serious Health Condition  
(Family and Medical Leave Act)**

U.S. Department of Labor

Wage and Hour Division



DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT

OMB Control Number: 1235-0003

Expires: 8/31/2021

**SECTION I: For Completion by the EMPLOYER**

**INSTRUCTIONS to the EMPLOYER:** The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: \_\_\_\_\_

Employee's job title: \_\_\_\_\_ Regular work schedule: \_\_\_\_\_

Employee's essential job functions: \_\_\_\_\_

Check if job description is attached: \_\_\_\_\_

**SECTION II: For Completion by the EMPLOYEE**

**INSTRUCTIONS to the EMPLOYEE:** Please complete Section II before giving this form to your medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form. 29 C.F.R. § 825.305(b).

Your name: \_\_\_\_\_  
First Middle Last

**SECTION III: For Completion by the HEALTH CARE PROVIDER**

**INSTRUCTIONS to the HEALTH CARE PROVIDER:** Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1635.3(b). Please be sure to sign the form on the last page.

Provider's name and business address: \_\_\_\_\_

Type of practice / Medical specialty: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_\_) \_\_\_\_\_

**PART A: MEDICAL FACTS**

1. Approximate date condition commenced: \_\_\_\_\_

Probable duration of condition: \_\_\_\_\_

**Mark below as applicable:**

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

☐ No ☐ Yes. If so, dates of admission: \_\_\_\_\_

Date(s) you treated the patient for condition: \_\_\_\_\_

Will the patient need to have treatment visits at least twice per year due to the condition? ☐ No ☐ Yes.

Was medication, other than over-the-counter medication, prescribed? ☐ No ☐ Yes.

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?  
☐ No ☐ Yes. If so, state the nature of such treatments and expected duration of treatment: \_\_\_\_\_

2. Is the medical condition pregnancy? ☐ No ☐ Yes. If so, expected delivery date: \_\_\_\_\_

3. Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

Is the employee unable to perform any of his/her job functions due to the condition: ☐ No ☐ Yes.

If so, identify the job functions the employee is unable to perform: \_\_\_\_\_

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**PART B: AMOUNT OF LEAVE NEEDED**

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? ☐ No ☐ Yes.

If so, estimate the beginning and ending dates for the period of incapacity: \_\_\_\_\_

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition? ☐ No ☐ Yes.

If so, are the treatments or the reduced number of hours of work medically necessary?  
☐ No ☐ Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

\_\_\_\_\_

Estimate the part-time or reduced work schedule the employee needs, if any:

\_\_\_\_\_ hour(s) per day; \_\_\_\_\_ days per week from \_\_\_\_\_ through \_\_\_\_\_

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? ☐ No ☐ Yes.

Is it medically necessary for the employee to be absent from work during the flare-ups?  
☐ No ☐ Yes. If so, explain:

\_\_\_\_\_

\_\_\_\_\_

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency : \_\_\_\_\_ times per \_\_\_\_\_ week(s) \_\_\_\_\_ month(s)

Duration: \_\_\_\_\_ hours or \_\_\_\_\_ day(s) per episode

**ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[illegible]

**Signature of Health Care Provider**

Date \_\_\_\_\_

**PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT**

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. **DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.**

Certification of Health Care Provider for  
Family Member's Serious Health Condition  
(Family and Medical Leave Act)

U.S. Department of Labor  
Wage and Hour Division



DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.

OMB Control Number: 1235-0003

Expires: 8/31/2021

**SECTION I: For Completion by the EMPLOYER**

**INSTRUCTIONS to the EMPLOYER:** The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave to care for a covered family member with a serious health condition to submit a medical certification issued by the health care provider of the covered family member. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: \_\_\_\_\_

**SECTION II: For Completion by the EMPLOYEE**

**INSTRUCTIONS to the EMPLOYEE:** Please complete Section II before giving this form to your family member or his/her medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a covered family member with a serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form to your employer. 29 C.F.R. § 825.305.

Your name: \_\_\_\_\_  
First Middle Last

Name of family member for whom you will provide care: \_\_\_\_\_  
First Middle Last

Relationship of family member to you: \_\_\_\_\_

If family member is your son or daughter, date of birth: \_\_\_\_\_

Describe care you will provide to your family member and estimate leave needed to provide care:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Employee Signature \_\_\_\_\_ Date \_\_\_\_\_

**SECTION III: For Completion by the HEALTH CARE PROVIDER**

**INSTRUCTIONS to the HEALTH CARE PROVIDER:** The employee listed above has requested leave under the FMLA to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), or genetic services, as defined in 29 C.F.R. § 1635.3(e). Page 3 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider's name and business address: \_\_\_\_\_

Type of practice / Medical specialty: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_\_) \_\_\_\_\_

**PART A: MEDICAL FACTS**

1. Approximate date condition commenced: \_\_\_\_\_

Probable duration of condition: \_\_\_\_\_

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

☐ No ☐ Yes. If so, dates of admission: \_\_\_\_\_

Date(s) you treated the patient for condition: \_\_\_\_\_

Was medication, other than over-the-counter medication, prescribed? ☐ No ☐ Yes.

Will the patient need to have treatment visits at least twice per year due to the condition? ☐ No ☐ Yes

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?

☐ No ☐ Yes. If so, state the nature of such treatments and expected duration of treatment:

\_\_\_\_\_  
\_\_\_\_\_

2. Is the medical condition pregnancy? ☐ No ☐ Yes. If so, expected delivery date: \_\_\_\_\_

3. Describe other relevant medical facts, if any, related to the condition for which the patient needs care (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PART B: AMOUNT OF CARE NEEDED:** When answering these questions, keep in mind that your patient's need for care by the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care:

4. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery? ☐ No ☐ Yes.

Estimate the beginning and ending dates for the period of incapacity: \_\_\_\_\_

During this time, will the patient need care? ☐ No ☐ Yes.

Explain the care needed by the patient and why such care is medically necessary:

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5. Will the patient require follow-up treatments, including any time for recovery? ☐ No ☐ Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

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Explain the care needed by the patient, and why such care is medically necessary: \_\_\_\_\_

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6. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery? ☐ No ☐ Yes.

Estimate the hours the patient needs care on an intermittent basis, if any:

\_\_\_\_\_ hour(s) per day; \_\_\_\_\_ days per week from \_\_\_\_\_ through \_\_\_\_\_

Explain the care needed by the patient, and why such care is medically necessary:

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7. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities? \_\_\_\_ No \_\_\_\_ Yes.

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: \_\_\_\_ times per \_\_\_\_ week(s) \_\_\_\_ month(s)

Duration: \_\_\_\_ hours or \_\_\_\_ day(s) per episode

Does the patient need care during these flare-ups? \_\_\_\_ No \_\_\_\_ Yes.

Explain the care needed by the patient, and why such care is medically necessary: \_\_\_\_\_

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**ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.**

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\_\_\_\_\_  
Signature of Health Care Provider

\_\_\_\_\_  
Date

**PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT**

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210.  
**DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.**

Notice of Eligibility and Rights & Responsibilities  
(Family and Medical Leave Act)

U.S. Department of Labor  
Wage and Hour Division



OMB Control Number: 1235-0003  
Expires: 8/31/2021

In general, to be eligible an employee must have worked for an employer for at least 12 months, meet the hours of service requirement in the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. While use of this form by employers is optional, a fully completed Form WH-381 provides employees with the information required by 29 C.F.R. § 825.300(b), which must be provided within five business days of the employee notifying the employer of the need for FMLA leave. Part B provides employees with information regarding their rights and responsibilities for taking FMLA leave, as required by 29 C.F.R. § 825.300(b), (c).

**[Part A – NOTICE OF ELIGIBILITY]**

TO: \_\_\_\_\_  
Employee

FROM: \_\_\_\_\_  
Employer Representative

DATE: \_\_\_\_\_

On \_\_\_\_\_, you informed us that you needed leave beginning on \_\_\_\_\_ for:

- \_\_\_\_\_ The birth of a child, or placement of a child with you for adoption or foster care;
- \_\_\_\_\_ Your own serious health condition;
- \_\_\_\_\_ Because you are needed to care for your \_\_\_\_\_ spouse; \_\_\_\_\_ child; \_\_\_\_\_ parent due to his/her serious health condition.
- \_\_\_\_\_ Because of a qualifying exigency arising out of the fact that your \_\_\_\_\_ spouse; \_\_\_\_\_ son or daughter; \_\_\_\_\_ parent is on covered active duty or call to covered active duty status with the Armed Forces.
- \_\_\_\_\_ Because you are the \_\_\_\_\_ spouse; \_\_\_\_\_ son or daughter; \_\_\_\_\_ parent; \_\_\_\_\_ next of kin of a covered servicemember with a serious injury or illness.

This Notice is to inform you that you:

- \_\_\_\_\_ Are eligible for FMLA leave (See Part B below for Rights and Responsibilities)
- \_\_\_\_\_ Are not eligible for FMLA leave, because (only one reason need be checked, although you may not be eligible for other reasons):
- \_\_\_\_\_ You have not met the FMLA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately \_\_\_\_\_ months towards this requirement.
- \_\_\_\_\_ You have not met the FMLA's hours of service requirement.
- \_\_\_\_\_ You do not work and/or report to a site with 50 or more employees within 75-miles.

If you have any questions, contact \_\_\_\_\_ or view the  
FMLA poster located in \_\_\_\_\_.

**[PART B-RIGHTS AND RESPONSIBILITIES FOR TAKING FMLA LEAVE]**

As explained in Part A, you meet the eligibility requirements for taking FMLA leave and still have FMLA leave available in the applicable 12-month period. However, in order for us to determine whether your absence qualifies as FMLA leave, you must return the following information to us by \_\_\_\_\_. (If a certification is requested, employers must allow at least 15 calendar days from receipt of this notice; additional time may be required in some circumstances.) If sufficient information is not provided in a timely manner, your leave may be denied.

- \_\_\_\_\_ Sufficient certification to support your request for FMLA leave. A certification form that sets forth the information necessary to support your request \_\_\_\_\_ is/\_\_\_\_\_ is not enclosed.
- \_\_\_\_\_ Sufficient documentation to establish the required relationship between you and your family member.
- \_\_\_\_\_ Other information needed (such as documentation for military family leave): \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

No additional information requested

If your leave does qualify as FMLA leave you will have the following responsibilities while on FMLA leave (only checked blanks apply):

\_\_\_\_\_ Contact \_\_\_\_\_ at \_\_\_\_\_ to make arrangements to continue to make your share of the premium payments on your health insurance to maintain health benefits while you are on leave. You have a minimum 30-day (or, indicate longer period, if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work.

\_\_\_\_\_ You will be required to use your available paid \_\_\_\_\_ sick, \_\_\_\_\_ vacation, and/or \_\_\_\_\_ other leave during your FMLA absence. This means that you will receive your paid leave and the leave will also be considered protected FMLA leave and counted against your FMLA leave entitlement.

\_\_\_\_\_ Due to your status within the company, you are considered a "key employee" as defined in the FMLA. As a "key employee," restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us. We \_\_\_\_\_ have/\_\_\_\_\_ have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us.

\_\_\_\_\_ While on leave you will be required to furnish us with periodic reports of your status and intent to return to work every \_\_\_\_\_.  
(Indicate interval of periodic reports, as appropriate for the particular leave situation).

If the circumstances of your leave change, and you are able to return to work earlier than the date indicated on the this form, you will be required to notify us at least two workdays prior to the date you intend to report for work.

If your leave does qualify as FMLA leave you will have the following rights while on FMLA leave:

- You have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period calculated as:
  - \_\_\_\_\_ the calendar year (January – December).
  - \_\_\_\_\_ a fixed leave year based on \_\_\_\_\_.
  - \_\_\_\_\_ the 12-month period measured forward from the date of your first FMLA leave usage.
  - \_\_\_\_\_ a "rolling" 12-month period measured backward from the date of any FMLA leave usage.
- You have a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. This single 12-month period commenced on \_\_\_\_\_.
- Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.
- You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. (If your leave extends beyond the end of your FMLA entitlement, you do not have return rights under FMLA.)
- If you do not return to work following FMLA leave for a reason other than: 1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; 2) the continuation, recurrence, or onset of a covered servicemember's serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.
- If we have not informed you above that you must use accrued paid leave while taking your unpaid FMLA leave entitlement, you have the right to have \_\_\_\_\_ sick, \_\_\_\_\_ vacation, and/or \_\_\_\_\_ other leave run concurrently with your unpaid leave entitlement, provided you meet any applicable requirements of the leave policy. Applicable conditions related to the substitution of paid leave are referenced or set forth below. If you do not meet the requirements for taking paid leave, you remain entitled to take unpaid FMLA leave.

\_\_\_\_\_ For a copy of conditions applicable to sick/vacation/other leave usage please refer to \_\_\_\_\_ available at: \_\_\_\_\_.

\_\_\_\_\_ Applicable conditions for use of paid leave: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Once we obtain the information from you as specified above, we will inform you, within 5 business days, whether your leave will be designated as FMLA leave and count towards your FMLA leave entitlement. If you have any questions, please do not hesitate to contact:

\_\_\_\_\_ at \_\_\_\_\_.

#### PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

It is mandatory for employers to provide employees with notice of their eligibility for FMLA protection and their rights and responsibilities. 29 U.S.C. § 2617; 29 C.F.R. § 825.300(b), (c). It is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 10 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION.



Designation Notice  
(Family and Medical Leave Act)

U.S. Department of Labor  
Wage and Hour Division



OMB Control Number: 1235-0003

Expires: 8/31/2021

Leave covered under the Family and Medical Leave Act (FMLA) must be designated as FMLA-protected and the employer must inform the employee of the amount of leave that will be counted against the employee's FMLA leave entitlement. In order to determine whether leave is covered under the FMLA, the employer may request that the leave be supported by a certification. If the certification is incomplete or insufficient, the employer must state in writing what additional information is necessary to make the certification complete and sufficient. While use of this form by employers is optional, a fully completed Form WH-382 provides an easy method of providing employees with the written information required by 29 C.F.R. §§ 825.300(c), 825.301, and 825.305(c).

To: \_\_\_\_\_

Date: \_\_\_\_\_

We have reviewed your request for leave under the FMLA and any supporting documentation that you have provided.  
We received your most recent information on \_\_\_\_\_ and decided:

\_\_\_\_ Your FMLA leave request is approved. All leave taken for this reason will be designated as FMLA leave.

The FMLA requires that you notify us as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your leave entitlement:

\_\_\_\_ Provided there is no deviation from your anticipated leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement: \_\_\_\_\_

\_\_\_\_ Because the leave you will need will be unscheduled, it is not possible to provide the hours, days, or weeks that will be counted against your FMLA entitlement at this time. You have the right to request this information once in a 30-day period (if leave was taken in the 30-day period).

Please be advised (check if applicable):

\_\_\_\_ You have requested to use paid leave during your FMLA leave. Any paid leave taken for this reason will count against your FMLA leave entitlement.

\_\_\_\_ We are requiring you to substitute or use paid leave during your FMLA leave.

\_\_\_\_ You will be required to present a fitness-for-duty certificate to be restored to employment. If such certification is not timely received, your return to work may be delayed until certification is provided. A list of the essential functions of your position \_\_\_\_\_ is \_\_\_\_\_ is not attached. If attached, the fitness-for-duty certification must address your ability to perform these functions.

\_\_\_\_ Additional information is needed to determine if your FMLA leave request can be approved:

\_\_\_\_ The certification you have provided is not complete and sufficient to determine whether the FMLA applies to your leave request. You must provide the following information no later than \_\_\_\_\_, unless it is not  
(Provide at least seven calendar days)  
practicable under the particular circumstances despite your diligent good faith efforts, or your leave may be denied.

(Specify information needed to make the certification complete and sufficient)

\_\_\_\_ We are exercising our right to have you obtain a second or third opinion medical certification at our expense, and we will provide further details at a later time.

\_\_\_\_ Your FMLA Leave request is Not Approved.

\_\_\_\_ The FMLA does not apply to your leave request.

\_\_\_\_ You have exhausted your FMLA leave entitlement in the applicable 12-month period.

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

It is mandatory for employers to inform employees in writing whether leave requested under the FMLA has been determined to be covered under the FMLA. 29 U.S.C. § 2617; 29 C.F.R. §§ 825.300(d), (e). It is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 10 – 30 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION.

# EMPLOYEE RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

## LEAVE ENTITLEMENTS

Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within 1 year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

## BENEFITS & PROTECTIONS

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

## ELIGIBILITY REQUIREMENTS

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave;\* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

\*Special "hours of service" requirements apply to airline flight crew employees.

## REQUESTING LEAVE

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave, if the employer determines that the certification is incomplete. It must provide a written notice indicating what additional information is required.

## EMPLOYER RESPONSIBILITIES

Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

## ENFORCEMENT

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

For additional information or to file a complaint:

**1-866-4-USWAGE**

(1-866-487-9243) TTY: 1-877-889-5627

**www.dol.gov/whd**

U.S. Department of Labor | Wage and Hour Division



# **Patchogue-Medford Schools**

Office for Human Resources  
241 South Ocean Avenue  
Patchogue, New York 11772  
(631) 687-6340  
FAX (631) 687-6349

## **NOTICE OF INTENTION TO RETURN FROM LEAVE**

### **To be completed by Employee:**

Name \_\_\_\_\_

Supervisor \_\_\_\_\_

Date Leave Commenced \_\_\_\_\_

Date of Planned Return \_\_\_\_\_

I understand that my restoration to employment is subject to the following conditions:

1. As a condition of restoration, each employee must provide a written certification from his or her health care provider that the employee is able to resume working.
2. Every attempt will be made to restore an employee returning from leave to his or her original position. If the employee's original position is unavailable, the employee will be placed in an equivalent position with equivalent pay and benefits.
3. Any employee returning from family and medical leave shall not be entitled to the accrual of any seniority or employment benefits during an unpaid leave.

Employee's Signature \_\_\_\_\_

Date \_\_\_\_\_

### **To be completed by Medical Provider:**

I have examined \_\_\_\_\_ and can  
certify that he or she is fully able to resume working on date) \_\_\_\_\_

Health Care Provider's Signature \_\_\_\_\_

Health Care Provider (print) \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_ Date \_\_\_\_\_