

FMLA and Military Leave

In accordance with the Family and Medical Leave Act of 1993 ("FMLA"), EASTERN affords its eligible employees Family and Medical Leave ("FMLA leave") as set forth in this policy.

1. Eligible Employees

Only eligible employees are entitled to FMLA leave. An eligible employee is an employee who has satisfied each of the following conditions:

- a) He or she has been employed by EASTERN for at least twelve months, which need not have been consecutive, prior to the commencement of the leave; and
- b) He or she has worked for EASTERN for at least 1,250 hours over the twelve (12) month period immediately prior to the commencement of the leave.

2. Reasons for Leave

EASTERN will grant FMLA leave only for one of the following reasons.

- a) Birth of a child, or placement of a child with the employee for adoption or foster care. Leave for this purpose must end within one year after the birth or placement;
- b) A serious health condition of the employee's spouse, child or parent;
- c) A serious health condition that makes the employee unable to perform the employee's job;
- d) To address specific qualifying exigencies pertaining to a member of the Armed Forces including a member of the National Guard or Reserves--Eligible employees may take FMLA leave while the covered military member is on active duty or call to active duty status for one or more of the following qualifying exigencies ("Qualified Exigency Leave"):
 - 1) Short-notice deployment
 - 2) Military events and related activities.
 - 3) Childcare and school activities.
 - 4) Financial and legal arrangements.
 - 5) Counseling.
 - 6) Rest and recuperation.
 - 7) Post-deployment activities.
 - 8) Additional activities to address other events which arise out of the covered military member's active duty or call to active duty status agreed upon by EASTERN as qualifying as an exigency and agreed upon both as to timing and duration.
- e) To care for a covered service member with a serious injury or illness ("Military Caregiver Leave").

3. Length of Leave

- a) Eligible employees shall be provided up to twelve (12) workweeks of unpaid leave using a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave for the employee's own serious health condition; for the

birth, adoption, foster placement or first-year care of a child; to care for a seriously ill spouse, child or parent; or for Qualifying Exigency Leave.

- b) Eligible employees shall be provided up to twenty-six (26) workweeks of unpaid leave in a single twelve-month period for Military Caregiver Leave.
 - 1) For Military Caregiver Leave, the "single 12-month period" begins on the first day the eligible employee takes FMLA leave to care for a covered service member and ends 12 months after that date, regardless of the method used by EASTERN to determine the employee's 12 workweeks of leave entitlement for other FMLA-qualifying reasons. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered service member during this "single 12-month period," the remaining part of his or her 26 workweeks of leave entitlement to care for the covered service member is forfeited.
 - 2) Military Caregiver Leave entitlement is applied on a per-covered-service member, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered service members or to care for the same service member with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any "single 12-month period." In addition, an eligible employee may take more than one period of 26 workweeks of leave to care for a covered service member with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness. When an eligible employee takes leave to care for more than one covered service member or for a subsequent serious injury or illness of the same covered service member, and the "single 12-month periods" corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than 26 workweeks of leave in each "single 12-month period."
 - 3) An employee eligible for Military Caregiver Leave is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the "single 12-month period" described above, provided that the employee is entitled to no more than 12 weeks of leave for any of the reasons stated above in Section A. Thus, for example, an eligible employee may, during the "single 12-month period," take 16 weeks of FMLA leave to care for a covered service member and 10 weeks of FMLA leave to care for a newborn child. However, the employee may not take more than 12 weeks of FMLA leave to care for the newborn child during the "single 12-month period," even if the employee takes fewer than 14 weeks of FMLA leave to care for a covered service member.
- c) Spouses both employed by EASTERN are limited to:
 - 1) A combined total of twelve (12) weeks of leave for the birth of a child or for placement with them of a child for adoption or for foster care; and
 - 2) A combined total of twelve (12) weeks of leave to care for a parent who has a serious health condition.
 - 3) Where the employees are eligible for Military Caregiver Leave, a combined total of 26 workweeks of leave during the "single 12-month period" if the leave is taken for birth of the employee's child or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement, to care for the employee's parent with a serious health condition, or to care for a covered service member with a serious injury or illness.

4. Benefits during Leave

FMLA leave is unpaid leave. However, whenever group insurance is provided to an employee before the employee takes FMLA leave, EASTERN will maintain the employee's coverage under any group (health, dental, life and income protection insurance's) plan during the leave on the same terms as if the employee continued to work.

- a) If an employee fails to return to work at the conclusion of his or her FMLA leave, EASTERN will recover from the employee amount it paid for insurance for the employee during the leave. However, EASTERN will not recover amounts paid for insurance for an employee during FMLA leave if the employee fails to return to work because of a serious health condition of the employee, the employee's spouse, child or parent, or if the employee fails to return for other reasons beyond his or her control. If an employee fails to return to work because of a serious condition, EASTERN will require the employee to provide medical certification of the condition within 30 days of EASTERN's request for such certification.
- b) Where FMLA leave is substituted paid leave under Section VIII, the employee's share of group health plan premiums will be paid by the method normally used during paid leave.
- c) Where FMLA leave is unpaid, the employee's share of group plan premiums will be paid to EASTERN.
- d) Employee payments must be made when payments would be made under COBRA.

5. Reinstatement after Leave

Seniority shall accrue for all purposes during FMLA leaves, and credit shall be given during FMLA leaves for accruals for other leaves. At the conclusion of FMLA leave, employees will be restored to their original position or to an equivalent position, with equivalent pay, benefits and other employment terms as if they had not taken such leave. However, the employee has no greater right to reinstatement or other benefits or conditions of employment than if the employee had been continuously employed during the leave period.

6. Limitations of FMLA Leave

- a) Intermittent Leave or Reduced Leave Schedule
 - 1) Intermittent leave or a reduced leave schedule may be taken for a serious health condition where this is medically necessary. An employee will be denied intermittent leave or leave on a reduced leave schedule for a serious health condition if the employee fails to establish, through medical certification, that there is a medical need for such a leave (as distinguished from voluntary treatments and procedures) or the employee fails to establish, through medical certification, that it is medically necessary for the leave to be taken intermittently or on a reduced leave schedule.
 - 2) Intermittent leave or a reduced leave schedule may not be taken for the birth of a child or for placement of a child for adoption or foster care.
 - 3) When intermittent leave or leave on a reduced leave schedule is requested based on planned medical treatment, EASTERN may require the employee to transfer temporarily 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. Alternatively, EASTERN may alter an existing job to better accommodate the employee's need for intermittent or

reduced leave. The alternative or altered position must have equivalent pay and benefits, but not equivalent duties

- b) When FMLA leave is needed to care for a family member or for the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to disrupt EASTERN's operation unduly.
- c) Special Limitations on FMLA Leave for Instructional Employees:
 - 1) Leave taken near the end of an academic term (or half-year): EASTERN may require the instructional employee to continue his or her FMLA leave to the end of the term if:
 - a. The leave begins more than five weeks before the term's end, will last at least three weeks, and the employee would return to work within three weeks of the end of the term;
 - b. The leave is for a purpose other than the employee's serious health condition, begins during the five-week period before semester's end, will last more than two weeks, and the employee would return during the two-week period before the end of the term; or
 - c. The leave is for a purpose other than the employee's own serious health condition, begins during the three-week period before the end of a term, and will last more than five days.
 - d. The entire period of leave taken counts as FMLA leave. However, if the annual FMLA leave entitlement of an employee who is required to take leave until the end of an academic term ends before the leave is completed, EASTERN will still maintain health benefits, reinstate the employee and provide other FMLA entitlements when the leave ends.
 - 2) Use of Intermittent Leave or Reduced Leave Schedule: If an eligible instructional employee requests intermittent leave or leave on a reduced leave schedule based on foreseeable planned medical treatment, and if the employee would be on leave for more than 20 percent of the total number of working days over the period of the leave, then EASTERN may require the employee to choose either (1) to take leave for a period or periods not greater than the duration of the planned treatment; or (2) to transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits, and which better accommodates recurring periods of leave than does the employee's regular position.

7. Application for FMLA Leave

- a) Employees must give 30 day's notice of their need for FMLA leave where the need for the leave is foreseeable, or such notice as is practicable under the circumstances.
- b) All requests for FMLA leave shall be made in writing and submitted to the Director with sufficient information to determine whether the leave qualifies as an FMLA leave.
- c) Employees must provide periodic reports during FMLA leave regarding the employee's status and intent to return to work.

8. Substitution of Paid Leave for FMLA Leave

- a) If the employee requesting an FMLA leave qualifies for and is entitled to any paid leave under a collective bargaining agreement, policy or statutory mandate, the employee may utilize such leave during the FMLA leave, at his/her discretion.
- b) Employees must substitute accrued paid leave for FMLA leave as follows:

1. Accrued paid medical/sick leave for FMLA leave for the employee's serious health condition;
 2. Accrued paid vacation, personal, or medical/sick leave for FMLA leave for the serious health condition of a spouse, child (defined as being age 18 or under) or parent;
 - With the Executive Director's approval and at the Executive Director's sole discretion to the maximum extent permitted by law, the employee may elect to use up to 30 days of the employee's accrued paid medical/sick for FMLA eligible leave for the serious health condition of a spouse, child or parent.
 - The employee shall not be eligible to use sick bank leave for this purpose.
 3. Accrued paid vacation or personal leave for the birth, adoption, or placement in foster care of a child.
- c) Paid leave taken by an employee will be designated FMLA leave by EASTERN if it is taken for an FMLA-qualifying purpose.
 - d) EASTERN will designate an employee's use of paid leave as FMLA leave based on information from the employee. In no event will EASTERN designate paid leave as FMLA leave after the leave has ended.

9. Certification of Serious Health Conditions and Certification of Fitness for Work

- a) Employees must provide medical certification supporting the need for leave due to serious health condition of the employee or an immediate family member on a form to be provided by EASTERN.
- b) EASTERN need not assume that an employee's statement or his/her physician's statement establishes fitness conclusively but may require a review and examination by a physician selected by EASTERN at school district expense. In the event the physician of an employee shall be of a contrary opinion to that of the physician selected by EASTERN, then EASTERN's physician and the employee's physician shall agree upon an impartial third physician whose medical opinion shall be conclusive and binding on the issue of medical capacity to continue in the performance of assigned duties.
- c) Employees must provide recertification of medical conditions every thirty days, or more frequently at the discretion of EASTERN, as allowed by the FMLA.
- d) An employee who takes FMLA leave because of the employee's own serious health condition must provide certification that he or she is able to resume work provided the employee has been absent from work as a result of the serious health condition for twenty days or more. EASTERN will deny reinstatement until the requested certification is provided.

10. Notice to Employees of Their Rights and Obligations under the FMLA

- a) EASTERN shall post, in conspicuous places in the district customarily used for notices to employees and applicants, a notice explaining the provisions of the FMLA.
- b) EASTERN will maintain in its policy book a Policy intended to comply with the FMLA.
- c) When an employee gives notice of his or her need for FMLA leave, EASTERN will inform the employee (1) of his or her rights and obligations under the FMLA, including any obligation the employee may have to make contributions toward benefits, and (2) of what may happen if the employee fails to meet those obligations.

11. Maintenance of Records

EASTERN will comply with the record-keeping requirements of the FMLA.

12. School Discretion

Except as set forth in this Policy, EASTERN reserves the right to exercise all discretion afforded it pursuant to the FMLA.

29 U.S.C.A. Sec. 2601 et seq.

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