

SALEM SCHOOL DISTRICT
Salem, Connecticut

PERSONNEL – CERTIFIED/NON-CERTIFIED

FAMILY AND MEDICAL LEAVE

Federal FMLA

Eligibility

Employees who have worked for the Board for at least 12 months and at least 1,250 hours (paraprofessionals must have worked for the Board for at least 12 months and at least 950 hours) during the 12 months preceding commencement of the leave may take up to 12 weeks of unpaid leave [Family and Medical Leave Act of 1993, as amended (FMLA)] for the following reasons:

1. Birth and/or care of a child of the employee;
2. Placement of a child into the employee's family by adoption or foster care arrangement;
3. Care of the employee's spouse, child or parent who has a serious health condition;
4. Inability of the employee to perform the functions of the employee's position due to a serious health problem.
5. In connection with a "qualifying exigency" (such as making legal, financial and child care arrangements and taking care of other family obligations) involving the employee's spouse, son, daughter or parent's foreign deployment or call (or impending call) to active military duty; or
6. To care for a covered servicemember's serious injury or illness that was incurred in the line of duty on active duty (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty) where the employee is the covered servicemember's spouse, son, daughter, parent or nearest blood relative.

Any FMLA leave taken by an employee during the applicable 12 month period will be used to determine the amount of available leave pursuant to the Family and Medical Leave Act. See "Method of Calculating 12 Month Period", set forth as follows: A 12 Month period measured from the day any employee's first FMLA leave begins. This method of calculation will be used on all applications for FMLA leave.

An eligible employee who takes family leave to care for a covered servicemember (either a currently serving servicemember or qualifying veteran) shall be entitled to a combined total of twenty-six (26) workweeks of unpaid leave during a single 12-month period. The "single 12-month period" begins on the first day the employee takes such leave and ends 12 months after that date.

The right to family leave for the birth and/or placement of a child into an employee's family may only be taken within the 12 months after the date of the birth or placement of the child. In the case of unpaid leave for the birth or placement of a child, intermittent leave or working a reduced number of hours is not permitted, unless both the employee and the Board agree. If both spouses are employed by the Board, the combined leave shall not exceed 12 weeks.

If both spouses eligible for leave are employed by the Board, their combined leave cannot exceed twenty-six (26) weeks of leave during a single 12-month period when leave is taken for the following reasons:

- To care for a covered servicemember, or;

- When a combination of leave is taken to care for a covered service member as well as for the birth of a child, to care for a child after birth or placement for adoption or foster care, and/or to care for a parent who has a serious health condition.

For purposes of the policy, a “serious health condition” means an illness, injury, impairment or physical or mental condition that involves:

- Any period of incapacity or treatment in connection with or consequent to in-patient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility;
- Any period of incapacity requiring absence from work, school or other regular daily activities, of more than three consecutive calendar days, that also involves continuous treatment by (or under the supervision of) a health care provider;
- Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or
- Incapacity due to prenatal care.

US Armed Forces (Including National Guard or Reserves)

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation, or eligible employees with a spouse, son, daughter or parent in the regular Armed Forces who is deployed to a foreign country, may use their 12-week leave entitlement to address certain “qualifying exigencies”. Salem School District requires that a request for such leave is supported by certification indicating that the service member has been called to active duty. This certification must be submitted to the Superintendent.

A “qualifying exigency” may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings. In order to secure leave for a qualifying exigency, employees must submit a completed DOL Form WH-384 (Attachment E) along with a copy of the covered military member’s active duty or foreign deployment orders or other documentation that certifies that the covered military member has been deployed or is on active duty (or has been notified of an impending call to active duty). DOL Form WH-384 (Attachment E) must be completed and returned within 15 calendar days of the date the Board distributes the form to the employee.

Care of a covered servicemember

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember (either a currently serving servicemember or qualifying veteran) during a single 12-month period.

“Covered Servicemember” means-

- (1) A member of the Armed Forces¹ 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 at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

¹ Including a member of the National Guard or Reserves

“Serious Injury or Illness” means-

- (1) In the case of a member of the Armed Forces, an injury or illness that was incurred by the member in line of duty on active duty (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and
- (2) In the case of a veteran who was a member of the Armed Forces at any time during the period of 5 years preceding the date on which the veteran undergoes medical treatment, recuperation or therapy, a qualifying injury or illness as defined by the Secretary of Labor incurred by the member in line of duty on active duty (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty) that manifested itself before or after the member became a veteran.

In order to secure this extended leave, employees must submit a completed DOL Form WH-385 (Attachment F). This Form must be completed and returned within 15 calendar days of the date the Board distributes the form to the employee.

Intermittent Leave/Reduced Hours

In the case of unpaid leave for serious health conditions of the employee or covered family member or serious injury or illness of a covered servicemember and due to a qualifying exigency, the leave may be taken intermittently or on a reduced hours basis only if such leave is medically necessary. Where an employee requests intermittent leave or leave on a reduced hours basis due to a family member or the employee’s own serious health condition, the Board has the option, in its sole discretion, to require the employee to transfer to a temporary alternative job for which the employee is qualified and which better accommodates the intermittent leave or reduced hours leave than the employee’s regular job. The temporary position will have pay and benefits equivalent to the employee’s regular job. One-half day is the shortest period of time that the payroll system uses to account for absences or leave and shall constitute the minimum intermittent or reduced leave increment.

Substitution of Accrued Leave

Employees shall be required to use their available accrued leave time, such as personal leave and/or vacation time, during the 12 week FMLA leave period, and available sick days when FMLA leave is taken because of a serious health condition of the employee. The Board’s policies, practice(s) and/or collective bargaining agreement(s) regarding vacation time, personal days, sick days or other leave time will determine if an employee is eligible to receive accrued paid or unpaid leave. The employee will be notified immediately, in writing, which accrued leave, if any, will be counted towards the 12 weeks of FMLA leave. If written notice is not given to the employee by the date of expiration of the leave, the accrued leave will not be counted towards the employee’s available 12 weeks of FMLA leave.

Designation Notice

When the Board has sufficient information to determine whether leave is being taken for a FMLA-qualifying reason, the Board will notify the employee whether the leave will be designated as FMLA Leave. The employee will be informed of the Board’s determination through the distribution of the “Designation Notice” (Attachment B, DOL Form WH-382), within five business days of the receipt of such information, absent extenuating circumstances. Sufficient information includes medical certification such as a Certification of Health Care Provider for Employee’s Serious Health Condition (Attachment C, DOL Form WH-380-E), a Certification of Health Care Provider for Family Member’s Serious Health Condition (Attachment D, DOL Form WH-380-F), a Certification for Serious Injury or Illness of Covered Servicemember (Attachment F, DOL Form WH-385), or a Certification of Qualifying Exigency (Attachment E, DOL Form WH-384).

If the Board has sufficient information to designate the leave as FMLA Leave immediately after receiving notice of the employee's need for leave, the Board may provide the employee with the Notice of Eligibility (Attachment A, DOL Form WH-381) and Designation Notice (Attachment B, DOL Form WH-382) at the same time.

If the Board will require an employee to present a fitness-for-duty certification in order to return to work, the Board will provide notice of such requirement with the Designation Notice. If such fitness-for-duty certification needs to address the employee's ability to perform the essential functions of his/her position, then the Board will notify the employee in the Designation Notice and attach a list of the essential functions of the position.

Employee Notice – Foreseeable /Unforeseeable Need

When the necessity of leave is foreseeable due to the expected birth or placement of a child, the employee must provide the Board at least 30 days notice of the employee's intention to take leave. If the date of birth or placement of a child requires the employee's leave to begin in less than 30 days for the date of notice to the Board, the employee must provide such notice as soon as practical. Leave due to pregnancy or complications from a pregnancy may be covered under Connecticut's Pregnancy Leave Act. Where the necessity for leave is due to a family member's or an employee's own serious health condition is foreseeable based on planned medical treatment, the employee must:

- Give at least 30 days notice, or as soon as practical if treatment starts in less than 30 days; and
- Make a reasonable effort to schedule the treatment so as not to unduly disrupt the operation of the Board, subject to the approval of the health care provider.

Where the need for leave is unforeseeable, the employee must give notice as soon as practical.

A request for FMLA Leave due to a qualifying exigency arising out of a spouse, child or parent's military deployment, order to covered active duty, or impending call to active duty that is foreseeable must be made as far in advance as is reasonable and practicable. The District requires copies of the military service member's active duty and foreign deployment orders for qualifying exigency leaves. DOL Form WH-384 (Attachment E) may be used for this purpose.

Certification of Physician/Practitioner

Any leave request based on a family member's or employee's own serious health condition or to care for a covered servicemember may have to be supported by certification from a health care provider. The employee must provide a copy of the certification to the Board in a timely manner. (Fifteen calendar days will be allowed to provide the certification). Certification from the health care provider must contain:

- The date the serious health condition began;
- The possible duration of the condition;
- If the leave is based on the care of a spouse, child or parent, a statement that the employee is needed to provide the care and estimate of the amount of time that need will continue;
- In the case of intermittent leave or leave on a reduced hours basis for planned medical treatment, the date the treatment is expected to be given and the duration of the treatment.

Health Insurance

During FMLA leaves of absences, the Board will continue to pay its portion of the health insurance premiums and the employee must continue to pay his/her share of the premiums. Failure of the employee to pay his/her share of the health insurance premiums may result in loss of coverage. If the employee does not return to work after the expiration of leave, the employee will be required to reimburse the Board

for payment of health insurance premiums during the FMLA leave, unless the employee does not return to work because of the presence of a serious health condition which prevents that employee from performing his/her job, or circumstances beyond the control of the employee.

During FMLA leave, when no other leave is substituted, the employee shall not accrue any additional benefits. Employment benefits accrued by the employee up to the day on which the FMLA leave of absence begins will be available upon return from leave.

With respect to pension and retirement plans, FMLA leave will be treated as continued service for purposes of vesting and eligibility to participate.

Return to Work

The Board may require an employee on FMLA leave to report periodically on his/her status, and intention to return to work. Also, periodic recertification of the medical condition may be required.

An employee taking leave due to the employee's serious health condition may be required to obtain certification that the employee is able to resume work prior to returning from any FMLA leave. The Board will consider the nature of the employee's serious health condition, and the demands of the employee's position, when deciding whether to require certification of ability to resume work.

Employees who return to work from FMLA leave of absence within or on the business day following the expiration of the 12 weeks are entitled to return to their job or an equivalent position without loss of benefits or pay.

Method for Calculating 12 Week Period

If an employee takes leave on an intermittent or reduced leave schedule only the amount of leave actually taken may be counted toward the 12 weeks of leave to which an employee is entitled. Where an employee normally works a part time schedule, the amount of leave to which an employee is entitled is determined on a pro-rata or proportional basis. If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks prior to the beginning of the leave period is used for calculating the employee's normal work week.

Instructional Employees

"Instructional employees" are those employees whose principle function is to teach and instruct students in a class, a small group, or an individual setting such as teachers, athletic coaches, and certain special education assistants. Teacher assistant or aides who do not have as their principle job actual teaching or instructing are not considered "instructional employees" for purpose of this policy. Auxiliary personnel such as counselors, psychologists or curriculum specialists, which principle function in not teaching or instructing students in a class, small group or individual setting are not considered "instructional employees". Maintenance workers and similar employees are also not "instructional employees".

Intermittent Leave/Reduced Leave – Instructional Employees

If an eligible instructional employee requests intermittent leave or leave on a reduced leave schedule to care for a family 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 percent of the total number of working days over the period the leave would extend, the Board as its option, may require the employee to choose either to:

1. Take leave for a period or periods of particular duration, not greater than the duration of the planned treatment; or
2. Transfer temporarily to an available alternate position for which the employee is qualified, which has equivalent pay and benefits and better accommodates recurring periods of leave than does the employee's regular position.

An instructional employee who does not give required notice of foreseeable leave to be taken intermittently or on a reduced leave schedule, may be required by the Board to take leave of a particular duration, or transfer temporarily to an alternative position. An instructional employee who begins leave more than five weeks before the end of term may be required by the Board to continue taking leave until the end of the term if:

1. The leave will last at least three weeks, and
2. The employee would return to work during the three-week period before the end of the term.

Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement. An instructional employee who is on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

Procedure

Except in the case of a qualifying exigency, notice by an employee of the need for a leave of absence under FMLA must be given to an appropriate supervisor at least 30 days before the leave is to commence, or as soon as possible if 30 days notice is not possible. The Board may waive such notice requirement and designate accrued leave as FMLA leave if it would qualify, except for the lack of notice.

Each employee taking leave which meets the requirement for FMLA leave will be provided a copy of this policy and the "Certification of Physician or Practitioner" form (if appropriate). Such forms are incorporated in, and made a part of, this policy.

A request for FMLA Leave due to a qualifying exigency arising out of a spouse, child or parent's military deployment, order to covered active duty, or impending call to active duty that is foreseeable must be made as far in advance as is reasonable and practicable. The Board requires copies of the military service member's active duty and foreign deployment orders for qualifying exigency leaves. DOL Form WH-384 (Attachment E) may be used for this purpose.

Records

The FMLA requires employers to maintain records in accordance with the record keeping requirements of Section 11(c) of the Fair Labor Standards Act and in accordance with FMLA regulations. FMLA regulations require that such records disclose the following:

1. Name, address and occupation of the employee; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid;
2. Dates FMLA leave is taken by employees. Leave must be designated in records as FMLA leave;
3. If FMLA leave is taken in increments of less than one full day, the hours of the leave;

4. Any written notice of FMLA leave given by the employee, and copies of all notices given to employees as required by law and this policy;
5. Any documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leave;
6. Payment of any employee benefits premium; and
7. Records of any dispute regarding designation of leave as FMLA leave, including any written statement from the Board or an employee of the reasons for the designation and for the disagreement.

Medical Records

Records and documents relating to medical certifications, re-certifications or medical histories of employees or employees' family members, shall be maintained in separate files/records and treated as confidential medical records.

CT FMLA

Consistent with CT state law, for non-certified staff to be eligible for CT FMLA they must be employed for at least three months during the previous 12 months. Under CT FMLA non-certified staff can take up to 12 weeks of unpaid leave in a 12-month period for qualifying reasons with an additional 2 weeks for certain pregnancy-related conditions.

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