POLICY MANAGEMENT
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Policy 410 — Legal update review

410 – Family and Medical Leave

Purpose

The purpose of this policy is to provide for family and medical leave to school district employees in accordance with the Family and Medical Leave Act of 1993 (FMLA) and with pregnancy and parenting leave and Minnesota Paid Leave under state law.
Review note: Scope updated to include Minn. Stat. ch. 268B, effective January 1, 2026.

General Statement of Policy

The following procedures and policies regarding family and medical leave are adopted by the school district, pursuant to the requirements of the FMLA and consistent with the requirements of the Minnesota parenting leave laws.

Policy Specifics

- **Definitions**

For federal FMLA eligibility, the employee must also work at a site where the employer has at least 50 employees within 75 miles. The federal eligibility definition does not govern eligibility for Minnesota pregnancy and parenting leave or Minnesota Paid Leave.
Review note: Existing federal requirement omitted from this policy; 29 C.F.R. § 825.600(b).

- "Covered active duty" means:

- in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
- in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in 10 U.S.C. § 101(a)(13)(B).
- "Covered service member" means:
- a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
- a covered veteran who is undergoing medical treatment, recuperation, or therapy or a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, and was discharged or released under conditions other than dishonorable, at any time during the period of five years preceding the first date the eligible employee takes FMLA leave to care for the covered veteran.
- "Eligible employee" means an employee who has been employed by the school district for a total of at least 12 months and who has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave. An employee returning from fulfilling his or her Uniformed Services Employment and Reemployment Rights Act (USERRA)-covered service obligation shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service. In determining whether the employee met the hours of service requirement, and to determine the hours that would have been worked during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule can generally be used for calculations. While the 12 months of employment need not be consecutive, employment periods prior to a break in service of seven years or more may not be counted unless the break is occasioned by the employee's fulfillment of his or her USERRA-covered service obligation or a written agreement, including a collective bargaining agreement, exists concerning the school district's intention to rehire the employee after the break in service.
- "Military caregiver leave" means leave taken to care for a covered servicemember with a serious injury or illness.

- “Next of kin of a covered servicemember” means the nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember’s next of kin, and the employee may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember’s only next of kin.
- “Outpatient status” means, with respect to a covered servicemember who is a current member of the Armed Forces, the status of a member of the Armed Forces assigned to:
- a military medical treatment facility as an outpatient; or
- a unit established for the purpose of providing command and control of members of the Armed Forces receiving care as outpatients.
- “Qualifying exigency” means a situation where the eligible employee seeks leave for one or more of the following reasons:
- to address any issues that arise from a short-notice deployment (seven calendar days or less) of a covered military member;
- to attend military events and related activities of a covered military member;
- to address issues related to childcare and school activities of a covered military member’s child;
- to address financial and legal arrangements for a covered military member;
- to attend counseling provided by someone other than a health care provider for oneself, a covered military member, or his/her child;
- to spend up to 15 calendar days with a covered military member who is on short-term, temporary rest and recuperation leave during a period of deployment;
- to attend post-deployment activities related to a covered military member;
- to address parental care needs; and
- to address other events related to a covered military member that both the employee and school district agree is a qualifying exigency
- “Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves:

- inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.
- “Veteran” has the meaning given in 38 U.S.C. § 101.

Leave Entitlement

- Twelve Week Leave under Federal Law
- Eligible employees are entitled to a total of 12 work weeks of unpaid family or medical leave during the applicable 12-month period as defined below, plus any additional leave as required by law. Leave may be taken for one or more of the following reasons in accordance with applicable law:
- birth of the employee’s child and to care for such child;
- placement of an adopted or foster child with the employee;
- to care for the employee’s spouse, son, daughter, or parent with a serious health condition;
- the employee’s serious health condition makes the employee unable to perform the functions of the employee’s job; and/or
- any qualifying exigency arising from the employee’s spouse, son, daughter, or parent being on covered active duty, or notified of an impending call or order to covered active duty in the Armed Forces.
- For the purposes of this policy, “year” is defined as a rolling 12-month period measured backward from the date an employee’s leave is to commence.
- An employee’s entitlement to FMLA leave for the birth, adoption, or foster care of a child expires at the end of the 12-month period beginning on the date of the birth or placement.
- A “serious health condition” typically requires either inpatient care or continuing treatment by or under the supervision of a health care provider, as defined by applicable law. Family and medical leave generally is not intended to cover short-term conditions for which treatment and recovery are very brief.
- A “serious injury or illness,” in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means:
- injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and
- in the case of a covered veteran 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 years preceding the date on which the veteran undergoes the

medical treatment, recuperation, or therapy, means a qualifying injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty in the Armed Forces and that manifested itself before or after the member became a veteran, and is:

- a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or
- a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability (VASRD) rating of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or
- a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or
- an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.
- Eligible spouses employed by the school district are limited to an aggregate of 12 weeks of leave during any 12-month period for the birth and care of a newborn child or adoption of a child, the placement of a child for foster care, or to care for a parent. This limitation for spouses employed by the school district does not apply to leave taken: by one spouse to care for the other spouse who is seriously ill; to care for a child with a serious health condition; because of the employee's own serious health condition; or pursuant to Paragraph 2.A.i.5. above.
- Depending on the type of leave, intermittent or reduced schedule leave may be granted in the discretion of the school district or when medically necessary. However, part-time employees are only eligible for a pro-rata portion of leave to be used on an intermittent or reduced schedule basis, based on their average hours worked per week. Where an intermittent or reduced schedule leave is foreseeable based on planned medical treatment, the school district may transfer the employee 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, and which has equivalent pay and benefits.
- If an employee requests a leave for the serious health condition of the employee or the employee's spouse, child, or parent, the employee will be required to

submit sufficient medical certification. In such a case, the employee must submit the medical certification within 15 days from the date of the request or as soon as practicable under the circumstances.

- If the school district has reason to doubt the validity of a health care provider's certification, it may require a second opinion at the school district's expense. If the opinions of the first and second health care providers differ, the school district may require certification from a third health care provider at the school district's expense. An employee may also be required to present a certification from a health care provider indicating that the employee is able to return to work.
- Requests for leave shall be made to the school district. When leave relates to an employee's spouse, son, daughter, parent, or covered servicemember being on covered active duty, or notified of an impending call or order to covered active duty pursuant to Paragraph 2.a.i.5. above, and such leave is foreseeable, the employee shall provide reasonable and practical notice to the school district of the need for leave. For all other leaves, employees must give 30 days' written notice of a leave of absence where practicable. The failure to provide the required notice may result in a delay of the requested leave. Employees are expected to make a reasonable effort to schedule leaves resulting from planned medical treatment so as not to disrupt unduly the operations of the school district, subject to and in coordination with the health care provider.
- The school district may require that a request for leave under Paragraph 2.a.i.5. above be supported by a copy of the covered military member's active duty orders or other documentation issued by the military indicating active duty or a call to active duty status and the dates of active duty service. In addition, the school district may require the employee to provide sufficient certification supporting the qualifying exigency for which leave is requested.
- During the period of a leave permitted under this policy, the school district will provide health insurance under its group health plan under the same conditions coverage would have been provided had the employee not taken the leave. The employee will be responsible for payment of the employee contribution to continue group health insurance coverage during the leave. An employee's failure to make necessary and timely contributions may result in termination of coverage. An employee who does not return to work after the leave may be required, in some situations, to reimburse the school district for the cost of the health plan premiums paid by it.
- The school district may request or require the employee to substitute accrued paid leave for any part of the 12-week period.

This substitution provision is subject to the chapter 268B restriction against compulsory exhaustion of accrued leave before or while taking Minnesota Paid Leave.
Review note: 2026 coordination requirement: Minn. Stat. § 268B.27, subd. 2.
Employees may be allowed to substitute paid leave for unpaid leave by meeting the requirements set out in the administrative directives and guidelines established for the implementation of this policy, if any. Employees eligible for leave must comply with the family and medical leave directives and guidelines prior to starting leave. The superintendent shall be responsible to develop directives and guidelines as necessary to implement this policy. Such directives and guidelines shall be submitted to the school board for annual review. The school district shall comply with written notice requirements as set forth in federal regulations. * Employees returning from a leave permitted under this policy are eligible for reinstatement in the same or an equivalent position as provided by law. However, the employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave.

- Twelve Week Leave under State Law
- An employee is entitled under Minnesota law to up to 12 weeks of unpaid pregnancy and parenting leave, whether or not the employee qualifies for FMLA leave; such leave
  Review note: State entitlement is independent of federal eligibility; Minn. Stat. §§ 181.940–181.941.
  which is available to a biological or adoptive parent in conjunction with the birth or adoption of a child, or to a female employee for prenatal care or incapacity due to pregnancy, childbirth, or related health conditions. The length of the leave shall be determined by the employee but must not exceed 12 weeks unless agreed by the employer. State pregnancy and parenting leave applies without a minimum length of employment or minimum number of hours worked, and to employers with one or more employees.
  Review note: 2023 change: Minn. Stat. § 181.940, subds. 2–3; effective July 1, 2023. State leave is an independent entitlement and may run concurrently with federal FMLA leave for the same purpose
  Review note: Clarification of existing law: Minn. Stat. § 181.943. but may be reduced by any period of paid parental, disability, personal, or medical, or sick leave, or accrued vacation provided by the employer so that the total leave does not exceed 12 weeks, unless agreed by the employer, or leave taken for the same purpose under the FMLA. The leave taken under this section shall begin at a time requested by the employee. An employee who plans to take leave under this section must give the employer reasonable notice of the date the leave shall commence and the estimated duration of the leave. For leave taken by a biological or adoptive parent

in conjunction with the birth or adoption of a child, the leave must begin within 12 months of the birth or adoption; except that, in the case where the child must remain in the hospital longer than the mother, the leave must begin within 12 months after the child leaves the hospital.

Additional state pregnancy and parenting leave requirements

Paid or unpaid time used for prenatal care medical appointments must not reduce the 12-week state pregnancy and parenting leave entitlement. The school district must continue group insurance and health care coverage for the employee and dependents on the same basis as if the employee were working, with the employee paying the employee share.

Retaliation or interference for requesting or taking state leave is prohibited. Reinstatement is to the former position or one with comparable duties, hours, and pay, subject to statutory exceptions. For leave longer than one month, the employee must notify a supervisor at least two weeks before returning.

Review note: 2024 updates—Minn. Stat. §§ 181.941, subd. 4, and 181.943(c), effective August 1, 2024. Reinstatement and retaliation language clarifies existing §§ 181.941–181.942.

Minnesota Paid Leave — effective January 1, 2026

Eligible employees may receive partial wage replacement for their own serious health condition and for bonding, family care, safety leave, or qualifying military exigencies under Minnesota Statutes, chapter 268B. Benefits are generally available for up to 12 weeks of medical leave and up to 12 weeks of family leave, with a combined maximum of 20 weeks in a benefit year. Eligibility is determined under chapter 268B and is separate from FMLA eligibility.

The school district must maintain employee and dependent group insurance coverage as if the employee were working, provided the employee pays the employee share. Reinstatement protections begin 90 calendar days after hire, subject to statutory eligibility and exceptions. Retaliation, interference, or obstruction of an application is prohibited.

Leave for the same purpose may run concurrently with FMLA or state pregnancy and parenting leave when applicable. The school district shall not require exhaustion of accrued sick, vacation, or personal leave before or during chapter 268B leave. Employees may elect permitted paid time off or supplemental benefits consistent with chapter 268B.

For foreseeable leave, employees must provide 30 days' notice; when that is impracticable, notice is due as soon as practicable. Intermittent leave and certification shall be administered under § 268B.085. The school district must provide required employee notices under § 268B.26.

Review note: New program—Minn. Stat. §§ 268B.04, 268B.085, 268B.09, 268B.26, and 268B.27. Apply approved equivalent-plan provisions if applicable.

- Twenty Six Week Servicemember Family Military Leave
- An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 work weeks of leave during a 12-month period to care for the servicemember. The leave described in this paragraph shall be available only during a single 12-month period. For purposes of this leave, the need to care for a service member includes both physical and psychological care.
- During a single 12-month period, an employee shall be entitled to a combined total of 26 work weeks of leave under Paragraphs 2.A. and 2.C. above.
- The 12-month period referred to in this section begins on the first day the eligible employee takes leave to care for a covered service member and ends 12 months after that date.
- Eligible spouses employed by the school district are limited to an aggregate of 26 weeks of leave during any 12-month period if leave is taken for birth of the employee's child or to care for the child after birth; for placement of a child 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 servicemember with a serious injury or illness.
- The school district may request or require the employee to substitute accrued paid leave for any part of the 26-week period.

This substitution provision is subject to the chapter 268B restriction against compulsory exhaustion of accrued leave before or while taking Minnesota Paid Leave.
Review note: 2026 coordination requirement: Minn. Stat. § 268B.27, subd. 2.
Employees may be allowed to substitute paid leave for unpaid leave by meeting the requirements set out in the administrative directives and guidelines established for the implementation of this policy, if any. Employees eligible for leave must comply with the family and medical leave directives and guidelines prior to starting leave. * An employee will be required to submit sufficient medical certification issued by the health care provider of the covered servicemember and other information in support of requested leave and eligibility for such leave under this section within 15 days from the date of the

request or as soon as practicable under the circumstances. * The provisions of Paragraphs 2.a.vii., 2.a.x., 2.a.xii., 2.a.iix., and 2.a.14. above shall apply to leaves under this section.

- **Special Rules for Instructional Employees**
- An instructional employee is one whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This includes, but is not limited to, teachers, coaches, driver's education instructors, and special education assistants.

Assistants or aides qualify only when actual teaching or instruction is their principal function.
Review note: Existing federal rule clarification: § 825.600(c).

- Instructional employees who request foreseeable medically necessary intermittent or reduced work schedule leave greater than 20 percent of the workdays in the leave period may be required to:
- take leave for the entire period or periods of the planned medical treatment; or
- move to an available alternative position for which the employee is qualified, and which provides equivalent pay and benefits, but not necessarily equivalent duties.
- Instructional employees who request continuous leave near the end of a semester may be required to extend the leave through the end of the semester. The number of weeks remaining before the end of a semester does not include scheduled school breaks, such as summer, winter, or spring break.
- If an instructional employee begins leave for any purpose more than five weeks before the end of a semester and the leave will last at least three weeks and the employee would return during the final three weeks of the semester,
  Review note: Existing federal rule correction: 29 C.F.R. § 825.602(a)(1). the school district may require that the leave be continued until the end of the semester.
- If the employee begins leave for birth, adoption or foster placement, care of a spouse, child or parent with a serious health condition, or military caregiver leave
  Review note: Existing federal rule correction: § 825.602(a)(2); qualifying exigency is not included.
  during the last five weeks of a semester, the school district may require that the leave be continued until the end of the semester if the leave will last more than two weeks and the employee would return during the final two weeks.
  Review note: Existing federal rule correction: both conditions are required; § 825.602(a)(2).
- If the employee begins leave for a purpose other than the employee's own serious health condition during the last three weeks of the semester and the

leave will last more than five working days, school district may require the employee to continue taking leave until the end of the semester.

- For intermittent-leave blocks, the entire block counts as FMLA leave. For employer-required extensions to semester end, time after the employee is ready and able to return does not count against FMLA entitlement.
  Review note: Existing federal rule correction: § 825.603. The school district will continue to fulfill the school district's leave responsibilities and obligations, including the obligation to continue the employee's health insurance and other benefits, if an instructional employee's leave entitlement ends before the involuntary leave period expires.
- **Other**
- The provisions of this policy are intended to comply with applicable law, including the FMLA and applicable regulations. Any terms used from the FMLA will have the same meaning as defined by the FMLA and/or applicable regulations. To the extent that this policy is ambiguous or contradicts applicable law, the language of the applicable law will prevail.
- The requirements stated in the collective bargaining agreement between employees in a certified collective bargaining unit and the school district regarding family and medical leaves (if any) shall be followed.
- **Dissemination of Policy**
- This policy shall be conspicuously posted in each school district building in areas accessible to employees.
- This policy will be reviewed at least annually for compliance with state and federal law.

Legal References:

Minn. Stat. §§ 181.940-181.944 (Parenting Leave)

Minn. Stat. ch. 268B (Minnesota Paid Leave), including §§ 268B.04, 268B.085, 268B.09, 268B.26, and 268B.27.
Review note: Add current state Paid Leave authority.

10 U.S.C. § 101 et seq. (Armed Forces General Military Law)

29 U.S.C. § 2601 et seq. (Family and Medical Leave Act)

38 U.S.C. § 101 (Definitions)

29 C.F.R. Part 825 (Family and Medical Leave Act)

Cross References:

MSBA Service Manual, Chapter 13, School Law Bulletin “M” (Statutory Provisions Which Grant Leaves to Licensed as well as Non-Licensed School District Employees – Family and Medical Leave Act Summary)

Sources checked

- State eligibility
- Pregnancy and parenting leave
- Reinstatement
- Prenatal appointments and concurrent leave
- Paid Leave duration
- Paid Leave notice and schedules
- Paid Leave protections
- Coordination of leave
- Federal school employee rules