

35. FAMILY AND MEDICAL LEAVE ACT (FMLA)

FMLA leave runs concurrently with paid time off and workers' compensation benefits. Employees are required to exhaust paid FMLA leave (e.g., sick leave, emergency leave, emergency medical leave, and personal leave) before taking unpaid FMLA leave.

ELIGIBILITY

To be eligible for FMLA leave, an employee must have:

1. Worked at least 12 months for HICD (need not be consecutive); and
2. Worked at least 1,250 hours during the 12 months preceding the need for leave. Paid time off and unpaid leave are not included in determining hours actually worked.

QUALIFYING REASONS

FMLA leave may be taken for more than one qualifying reason but is limited to a total of 12 weeks in a 12-month period. The eligibility requirement must be verified with the first FMLA leave request and for each new qualifying reason during the rolling calendar year.

Qualifying reasons for FMLA leave:

1. Birth of a child and to care for a newborn child of the employee or spouse*
2. Placement with the employee of a child for adoption or foster care**
3. Care for the employee's spouse, child, or parent with a serious health condition.
4. A serious health condition that makes an employee unable to perform the functions of the employee's job.

* For the purpose of parental bonding with a newborn, the employee is entitled to 12 weeks of job protected leave. Sick leave can only cover the portion of illness or disability for the employee or child which would typically be 6 weeks for a normal vaginal childbirth and 8 weeks for a C-section birth. To support employees due to the inability for cumulative leave, maternity leave will be awarded of 6 weeks paid leave and paternity leave will be awarded of 3 weeks paid leave, not including school leave provided. Employees wanting to extend such leave may utilize personal leave, emergency leave, and sick leave.

** For the purpose of parental bonding adopted or foster child, the employee is entitled to 12 weeks of job protected leave. To support employees due to the inability for cumulative leave, maternity leave will be awarded of 6 weeks paid leave and paternity leave will be awarded of 3 weeks paid leave, not including school leave provided. Employees wanting to extend such leave may utilize personal leave, emergency leave, and sick leave.

QUALIFYING EXIGENCY LEAVE AND MILITARY CAREGIVER LEAVE

Active-duty service members qualifying exigency may use up to 26 weeks in a 12-month period. Covered active duty means duty during deployment to a foreign country.

1. A qualifying exigency arising out of the employee's spouse, child, or parent's covered active duty or call to active duty in support of a contingency operation. Qualifying exigency leave is a FMLA-qualifying reason for which an eligible employee may use his/her entitlement for up to 12 work weeks of FMLA leave each year. An eligible employee may take 12 weeks of leave for both qualifying exigencies leave and leave for a serious health condition.
2. Care for a covered service member, current member of the Armed Forces, including Regular National Guard or Reserves, with a serious injury or illness incurred in the line of active duty if the employee is the spouse, child, parent, or next of kin of the service member.

DEFINITION OF FAMILY MEMBER

Family Medical Leave Act (FMLA) leave can be used to care for a family member with a serious health condition. Documentation (birth certificate, court document) may be requested to confirm the family relationship and age of child.

The federal FMLA defines family member as:

1. Spouse – husband or wife, including those in same-sex marriages
2. Own Parent (not parent “in-laws”)
3. Child – biological, adopted or foster child, stepchild, legal ward, or a child of a person standing “in loco parentis” who is either under the age of 18, or 18 or older and incapable of self-care because of mental or physical disability
4. Covered service member.

SERIOUS HEALTH CONDITIONS

1. Inpatient Care – requiring overnight hospitalization and subsequent treatment
2. Continuing Treatment
3. A period of incapacity of more than three full consecutive calendar days
4. An in-person visit to a health care provider within 7 days of the first day of incapacity and a second in-person visit within 30 days of the first day of incapacity or
5. An in-person visit to a health care provider within 7 days of the first day of incapacity followed by a regimen of continuing treatment such as a course of medication or physical therapy
6. Chronic conditions continuing over an extended period of time (e.g., asthma, diabetes, migraine headaches)
7. Any period of incapacity (inability to perform essential duties of job or perform other regular daily activities)
8. May cause episodic rather than continuous incapacity
9. Requires at least two visits annually to the health care provider
10. Permanent or long-term conditions (e.g., Alzheimer's, stroke, terminal diseases)
11. Requires continuing supervision by a health care provider

12. Conditions requiring multiple treatments (e.g., chemotherapy, dialysis, physical therapy)
13. Restorative surgery or conditions, if left untreated, would result in incapacity of more than 3 full consecutive calendar days

INTERMITTENT/REDUCED SCHEDULE LEAVE

1. The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances.
 2. Intermittent/reduced schedule leave may be taken when medically necessary, as provided on FMLA certification, to care for a seriously ill family member, or because of the employee's serious health condition.
 3. Intermittent/reduced schedule leave may not be taken to care for a newborn or newly placed adopted or foster care child. Only with approval by the principal will an exception be made.
- Only the amount of leave actually taken while on intermittent/reduced schedule leave will be charged against employee's FMLA leave. Employees may not be required to take more FMLA leave than necessary to address the circumstances that cause the need for leave.

Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with the site principal to schedule the leave so as not to unduly disrupt the school/department's operations, subject to the approval of the employee's health care provider. In such cases, the employee may be transferred temporarily to an alternative job with equivalent pay and benefits that accommodate the recurring periods of leave better than the employee's regular job.

SPECIAL RULES FOR SCHOOLS

Congress recognized there could be a substantial disruption to the educational process from instructional employees taking leave at certain times during the academic year or for certain intervals. As a result, there are special rules in the FMLA regulations regarding "instructional employees" of public and private elementary and secondary schools. "Instructional employees" are those whose principal function is to teach and instruct students in a class, small group, or individual setting. Thus, "instructional employees" includes not only teachers in the school, but also athletic coaches and special education assistants. For "instructional employees," the following rules apply:

1. With regard to intermittent or reduced schedule leave, the school may require the employee to choose:
 - a. To take leave of a particular duration not to exceed the duration of the planned leave (the entire period of leave is counted as FMLA leave); or
 - b. To temporarily transfer to another position, so long as such position has equivalent pay and benefits and is a position for which they are qualified. The position also has to better accommodate the employee's intermittent leave.

If leave is requested near the end of the term, the following rules apply regarding job restoration:

1. Leave within last 3 weeks of the end of the academic term – for a purpose other than the instructional employee’s own serious health condition, district may require continuous leave until the end of the term if the period of leave lasts more than 5 working days.
2. Leave within last 5 weeks of the academic term for a purpose other than the instructional employee’s own serious health condition, district may require continuous leave until the end of the term if the period of leave is longer than 2 weeks; and if the result to work would occur within 2 weeks of the end of the academic term.
3. Leave more than 5 weeks PRIOR to the end of the academic term – The district may require continuous leave until the end of the term if the period of leave is at least 3 weeks; and the return to work would occur during the last 3 weeks of the academic term.

In these cases, only the period of leave taken until the employee is ready to return to work may be charged against the instructional employee’s 12 weeks of FMLA.

When counting 1250 hours worked, teachers can use work time before and after school to determine hours worked. As a benchmark, teachers physically working 9 months of the year would meet the 1250 benchmark if they worked 35 hours a week.

RETURNING FROM FMLA

The employee shall notify the principal of their fit for duty/return to work three (3) business days in advance of the return work date. Principal will evaluate the notification to verify there are no restrictions that will cause the employee not to be able to perform the essential duties of his/her job. If there are no restrictions or minor restrictions below what is required for the job, employee will return to work with any restrictions that might be needed. If there are restrictions that do not allow the employee to perform the essential duties of their job, the employee will not be allowed to return to work until the principal and employee have time to meet and discuss if reasonable accommodations can be made.

The employee is expected to be at work on the date indicated by the principal. If the employee does not come back to work that day, the employee will have an unexcused absence. An employee who is returning from an approved FMLA absence will be returned to the same position held at the time the leave began or to an equivalent position. An employee on FMLA leave whose position is affected by a reduction in force or reassignment, may not be reinstated if it can be demonstrated the reduction in force or reassignment would have occurred had the employee been working and not on FMLA leave.

Key employees (employees who are among the highest 10% compensated) may be an exception to the reinstatement rule if reinstatement would result in “substantial and grievous economic injury” to the district. If circumstances allow, the principal will notify the key employee before the FMLA leave begins that reinstatement might not be available when they are ready to return to work.

SUBSTITUTION OF ACCRUED LEAVE

All time missed in a work day due to FMLA leave is charged to available leave accruals, starting with sick leave (if the leave qualifies to use sick leave), and personal (if eligible). If an employee is to be gone for an FMLA eligible reason, that time off shall be charged to FMLA. This time off shall be charged to non-exempt (hourly paid) and exempt employees (salaried, including

instructional and professional exempt staff). When on FMLA leave and all paid time-off accruals have been exhausted, FMLA leave will convert to unpaid FMLA leave status. As previously stated, employees are required to exhaust all available paid leave before taking unpaid FMLA leave.

MAINTENANCE OF HEALTH BENEFITS

When an employee is on FMLA leave and all paid time-off accruals have been exhausted, the employee will go into FMLA leave without pay status. The employee, in this unpaid status, will continue to have the employer paid health benefits while on FMLA; however, the employee will need to make arrangements to pay for any employee paid (optional) benefit deductions (i.e., dental insurance, dependent medical insurance) when going out on FMLA leave. The coverage will be dropped if payment is more than 30 days late. Other benefits, including board paid contribution (if eligible) and cash payments chosen by the employee instead of group health insurance coverage, will not be maintained during the period of unpaid FMLA leave. Accrued paid leave, such as personal leave, will not continue to accrue during the period of unpaid leave, including FMLA.

NOTICE OF NEED

Eligible employees seeking to use FMLA leave need to provide a 30-day advance notice of the need to the principal, or as soon as practicable when the need is not foreseeable.

SUBMITTING TIME OFF FOR FMLA

Employees are required to submit their leave in the same way they would for any other leave request in their department.

1. Teachers need to submit their leave requests, requesting a substitute as well as through any other method requested by their Building Administrator.
2. Support employees need to submit their leave requests through the pre-established channels to their supervisor.
3. Employees should keep in contact with their immediate supervisor periodically during the FMLA leave to let them know if the employee is on track for returning on the date listed on the request.
4. If the employee is unavailable to enter their time due to the severity of their illness, the supervisor must enter the time on the employee's behalf.
5. All FMLA time off should be entered and accounted for by the administration.

RECERTIFICATION OF FMLA

- A. Generally, an employer may request recertification for leave taken because of any employee's own serious health condition or the serious health condition of a family member no more than every 30 days and only in connections with an absence by the employee.
- B. If the medical certification indicates that the minimum duration of the condition is more than 30 days, an employer must wait until the minimum durations expires before requesting recertification, unless subsection C applies. In all cases, an employer may

request a recertification of a medical condition every six months in connections with an absence by the employee. Accordingly, even if the medical certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six months (e.g., for lifetime condition), the employer would be permitted to request recertification every six months in connection with an absence.

C. An employer may request recertification in less than 30 days if:

1. The employee requests an extension of leave;
2. Circumstances described by the previous certification have changed significantly, (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications).
3. The employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

The employee must provide the requested recertification to the employer within the time frame requested by the employer, which must allow at least 15 days after the employer's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

The employer may ask for the same information when obtaining recertification as that permitted for the original certification. The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification or adequate authorization to the health care provider) in the recertification process as in the initial certification process. As part of the information allowed to be obtained on recertification for leave taken because of a serious health condition, the employer may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.

Any recertification requested by the employer shall be at the employee's expense unless the employer provides otherwise. No second or third opinion on recertification may be required.