



Book	Policy Manual
Section	300 Employees
Title	Family and Medical Leaves
Code	335
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Purpose

Pursuant to the Family and Medical Leave Act, up to twelve weeks of unpaid leave will be granted in each twelve-month period to eligible employees. It is the purpose of this policy to provide district employees with information regarding the rights to which they are entitled under the provisions of the Family and Medical Leave Act of 1993 as amended (FMLA) and the regulations promulgated under the FMLA. If the FMLA or the regulations promulgated under the FMLA are amended or revised, this policy shall be deemed amended accordingly to the extent said revisions are mandatory.

The district intends to abide by the FMLA and expects the same of its employees. All terms within this Policy shall correspond to those defined in the Act and its regulations. The employee will be given an Employer's Response to Request form which will advise him or her of the employee's rights and obligations under the FMLA. Questions about the FMLA regulations or this Policy should be directed to the Superintendent.

Authority

The Board shall provide eligible administrative, professional and support employees with unpaid leaves of absence in accordance with the Family And Medical Leave Act, hereinafter referred to as FMLA. [\[1\]](#)[\[2\]](#)

Employee requests for FMLA leave shall be processed in accordance with law, Board policy and administrative regulations.

Definitions

Eligible Employee means an employee who has been employed by the district:

1. For at least twelve (12) months before the leave is requested. The 12-month period used to calculate an employee's leave entitlement will be calculated on a fiscal year basis, from July 1st to June 30th.
2. For at least 1,250 hours of actual service with the district during the 12-month period immediately before the leave commences. Workdays during which the employee was on unpaid leave or sabbatical leave do not constitute hours worked.

Employment Benefits means all benefits provided or made available to district employees including, where applicable, group health insurance, life insurance, sick leave, vacation and/or personal leave, educational benefits, and pensions.

Group Health Plan means any plan as defined in section 5000(b)(1) of Title 26 of the United States Code.

Health Care Provider means any doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices, or any other person determined by the Secretary of the United States Department of Labor to be capable of providing health care services.

Leave means leave authorized by the FMLA and this policy, unless the context clearly requires otherwise.

Parent means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

Reduced Leave Schedule means a leave schedule that reduces the usual number of hours per work week, or hours per workday, of an employee.

Serious Health Condition means an illness, injury, impairment or physical or mental condition that involves either:

1. In-patient care in a hospital, hospice, or residential medical care facility, or
2. Continuing treatment by a health care provider for
 - a. A period of incapacity requiring absence from work, school, or other regular activities for more than three (3) calendar days
 - b. A chronic, long-term health condition that is either incurable or serious
 - c. Prenatal care

Son or Daughter means a biological, adopted, or foster child, a step-child, a legal ward, or a child of a person standing in loco parentis, who is either:

1. Under eighteen (18) years of age.
2. Eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.
3. Between the ages of eighteen (18) and twenty-three (23) years of age, if immediately prior to the serious health condition s/he was a member of the same household as the employee.

Twelve-month Period means the rolling twelve-month period measured backward from the date an employee uses any leave pursuant to the FMLA or this policy.

Active Duty means duty under a call or order to active duty under Sections 688, 12301(a), 12302, 12304, 12305, 12406, or Chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.

Contingent Operation means a military operation that is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or results in the call or order to, or retention on, active duty, as defined above, of members of the uniformed services.

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.

Outpatient Status with respect to a covered service member means 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 medical care of outpatients.

Next of Kin used with respect to an individual means the nearest blood relative of that individual.

Serious Injury or Illness in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

Delegation of Responsibility

The Superintendent shall develop and disseminate administrative procedures to implement FMLA leave for eligible employees.

The district shall post, in conspicuous places in the district customarily used for notices to employees and applicants, a notice regarding the provisions of the FMLA and the procedure for filing a complaint.[\[3\]](#)

Employee requests for leave, both FMLA and non-FMLA, shall be submitted in writing on a district form.

Guidelines

Nothing in this policy shall be construed to expand or reduce any employee's right to paid or unpaid leave under any contract, code, statute or other Board policy.

Availability of Leave

Employees' eligibility for FMLA leave shall be based on the criteria established by law.[\[4\]](#)[\[5\]](#)

An Eligible Employee shall be entitled to a total of twelve (12) work weeks of leave during any twelve-month period for one (1) or more of the following reasons:[\[5\]](#)

1. The birth of a child or the placement of a child with the employee for adoption or foster care (available to both men and women); or
2. To care for a spouse, son, daughter, or parent who has a serious health condition; or
3. The employee's serious health condition if it makes the employee unable to perform the functions of his/her position.
4. For a qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.

Eligible employees shall be provided up to twenty-six (26) workweeks of unpaid leave in a single twelve-month period to care for an ill or injured covered servicemember.[\[5\]](#)

The district shall utilize a rolling twelve-month period measured backwards from the date leave is used to determine if an employee has exhausted his/her FMLA leave in any twelve-month period.[\[6\]](#)

Intermittent Leave or Leave on a Reduced Leave Schedule

If an eligible employee needs 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% of the total number of working days over a period the leave would extend, the district may require the employee to choose 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 recurring periods of leave than does the employee's regular position.

Notice and Scheduling

Where the necessity for FMLA is foreseeable, the employee must provide to the Superintendent at least thirty (30) days' notice of the employee's intention to take leave. If the leave is requested to begin in less than thirty (30) days, the employee must provide such notice as reasonably practical under the circumstances. Where the necessity for leave is foreseeable based on planned medical treatment, the employee shall make a reasonable effort to schedule the treatment so as not to disrupt the operations of the district, subject to the approval of the health care provider of the employee, son, daughter, spouse or parent, as appropriate.

If an employee does not give required notice of 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. Alternately, the district may require the employee to delay the taking of leave until the notice provision is met.

Concurrent Use of FMLA Leave Generally

An employee requesting any paid or unpaid leave under any provision of a collective bargaining agreement (providing statement of the reason is required in the contract) or any code, statute or board policy must explain the reason(s) for the requested leave so the Superintendent determine if the leave may qualify as FMLA leave. If the requested leave qualifies as FMLA leave, it shall be designated as such and shall count against any leave to which the employee is entitled under the FMLA and this policy.

If at any time an employee requests or is granted leave for a reason which qualifies as FMLA or under any other provision of any contract, code, statute or other board policy or both, and if the reason for that leave qualifies for both for unpaid leave under this policy and for paid or unpaid leave under any other provision of any contract, code, statute or other board policy, then in all such cases any leave granted shall be deemed to be concurrent use of both the employee's FMLA leave under this policy and the employee's leave under such other provision of such contract, code, statute or other board policy.

Paid Leave Concurrent with FMLA Leave

If at any time an employee requests or is granted leave for a reason which qualifies for leave under either this policy or any other provision of any contract, code, statute or other board policy, or both, and if the reason for that leave qualifies both for unpaid leave under this policy and for paid leave under any other provision of any contract, code, statute or other board policy, then in all such cases and to the extent such paid leave is available, the employee shall be required to substitute paid leave available under such other provision of any contract, code, statute or other board policy for unpaid FMLA leave available under this policy, and any leave granted shall be deemed to be concurrent use of both the employee's FMLA leave under this policy and the employee's leave under such other provision of such contract, code, statute or other board policy.

All paid leave which is substituted for FMLA leave shall reduce in whole or in part the twelve (12) or twenty-six (26) (in the case of leave to care for a service member) work weeks of unpaid leave provided under the FMLA and this policy.

Once an employee has used all paid leave which may be substituted for FMLA leave, any remaining leave to which the employee is entitled under the FMLA and this policy shall be unpaid leave governed by this policy.

Unpaid Leave Concurrent with FMLA Leave

If at any time an employee requests or is granted leave for a reason which qualifies for leave under either this policy or any other provision of any contract, code, statute or other board policy, or both, and if the reason for that leave qualifies both for unpaid leave under this policy and for unpaid leave under any other provision of any contract, code, statute or other board policy, then in all such cases leave granted under such provisions shall be deemed to be concurrent use of both the employee's FMLA leave under this policy and the employee's leave under such other provision of any contract, code, statute or other board policy.

All unpaid leave which is substituted for FMLA leave shall reduce in whole or in part the twelve (12) or twenty-six (26) (in the case of leave to care for a service member) work weeks of unpaid leave provided under the FMLA and this policy.

Certification of Serious Health Condition

Any leave requested which is based on a family member's or next of kin's serious health condition or the employee's own serious health condition must be supported in a timely manner by certification from a health care provider. The employee is responsible for providing this certification to the Superintendent. A certification form for use by health care providers which is consistent with this policy and applicable regulations shall be promulgated by the Superintendent as an administrative regulation. The certification must state at minimum:

1. The date the serious health condition began.
2. The probable duration of the condition.
3. The appropriate medical facts regarding the condition.
4. In the event the leave is based on the care of a qualified family member or next of kin, a statement that the employee is needed to provide the care and an estimate of the amount of time that the need will continue.
5. In the event the leave is based on the employee's own serious health condition, a statement that the employee is unable to perform the functions of his or her job.
6. In the case of intermittent leave or a reduced leave schedule for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment.
7. In the case of intermittent leave or a reduced leave schedule which is based on the employee's own serious health condition, a statement of the medical necessity for the intermittent leave or reduced leave schedule and the expected duration of the intermittent leave or reduced leave schedule.
8. In the case of intermittent leave or a reduced leave schedule which is based on the care of a qualified family member or next of kin, a statement that the employee's intermittent leave or reduced leave schedule is necessary for the care of the family member or next of kin who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

9. In the absence of the required physician's certification, leave will be delayed or denied and, if the employee is absent, the employee will be treated as absent without leave and will be subject to discipline, which may include discharge.

The Superintendent may require, at his/her discretion and if circumstances so warrant, that the employee who has provided initial certification obtain subsequent recertification(s) of the continued need for leave.

Second Opinions

Where leave is for the employee's own serious health condition or the serious health condition of a family member, the district reserves the right to require a second opinion from a health care provider designated by it. If the second opinion conflicts with the original health care provider's opinion, a third opinion may be required. Second and third opinions will be at no cost to the employee.

The physician who conducts the examination and renders the second opinion will be selected by the district. The physician used to render the third opinion will be selected by the employee. These physicians must be participating in the PPO and be among the list of specialists in the appropriate field of medicine relevant to the serious health condition.

In the event that opinions are needed with respect to the serious health condition of a family member, the physician selected will be within normal commuting distance of the family member's residence and, likewise, be a specialist in the appropriate field.

Benefits While on Leave

An employee taking leave shall not lose any employment benefits accrued prior to the date on which the leave commences. While an employee is on FMLA leave, the district shall maintain coverage under any group insurance plan during the duration of the FMLA leave at the same level and under the same conditions coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. If the employee does not return at the completion of the leave, under the circumstances delineated under the FMLA, he or she will be responsible for the premiums paid by the district to maintain the coverage under the health plan. Neither seniority nor benefits accrue during the period of the leave.

Periodic Reports

The district may require employees on leave to report on their status periodically. An employee who fraudulently obtains FMLA leave is subject to discharge.

Spouses Employed by the District

In any case in which a husband and wife entitled to FMLA leave are employed by the district, the aggregate number of work weeks of leave to which both may be entitled may be limited to twelve work weeks during any twelve-month period, if such leave is taken for the birth or placement of a child for adoption or foster care (exclusive of any maternity leave entitlement of the wife under a collective bargaining agreement) or for the care for a parent who has a serious health condition.

Return to Work

On return from leave, the employee will be restored to the same position if the same position is in existence. Otherwise, the employee will be assigned to an equivalent position. The district shall require an employee to provide a physician's certification before he/she is permitted to return to work following a leave due to his or her own serious health condition. A certification also may be required if the employee claims that he or she is unable to return to work.

An employee who does not return to work the next working day following the expiration of a FMLA leave, or who fails to notify the district of his/her ability to return from leave early, will be considered to be absent without leave and will be subject to discipline, which may include discharge.

In the event an employee who is employed principally in an instructional capacity and who is on leave under this policy seeks to return from leave prior to or at the end of the employee's FMLA leave eligibility which return date is near the end of the semester, the following special rules shall apply:

1. An instructional employee begins leave more than five weeks before the end of a term. The district may require the employee to continue taking leave until the end of a 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 employee begins leave for a purpose other than the employee's own serious health condition during the five-week period before the end of the term. The district may require the employee to continue taking leave until the end of the term 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 term.
3. The employee begins leave for a purpose other than the employee's own serious health condition during the three-week period before the end of the term, 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 term.

In the case of an employee who is required to take leave until the end of an academic term, 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 district term. Therefore, any additional leave required by the district to the end of the district term 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.

- Legal
1. 29 U.S.C. 2601 et seq
 2. 29 CFR Part 825
 3. 29 U.S.C. 2619
 4. 29 U.S.C. 2611
 5. 29 U.S.C. 2612
 6. 29 CFR 825.200
- Pol. 813

[AP335 FML Request for Employee WH-380-E.pdf \(503 KB\)](#)

[AP335 FML Request for Family Member WH-380-F.pdf \(207 KB\)](#)

[AP335 FML District Response Form.pdf \(222 KB\)](#)