

## LEAVE WITHOUT PAY FOR FAMILY AND MEDICAL PURPOSES

### A. Eligible Employees

An employee who has worked for the School Board (i) for at least 12 months and (ii) for at least 1,250 hours during the previous 12-months is eligible to apply for the leave provided herein.

### B. Definitions

The following definitions shall apply for purposes of this policy:

1. The term "active duty" means duty under a call or order to active duty under a provision of law referred to in 10 U.S.C. § 101(a)(13)(B).
2. The term "covered military member" means a member of the Reserves or a retired member of the Regular Armed Forces or Reserves. A member of the Regular Armed Forces is not a covered military member for purposes of qualifying exigency leave.
3. The term "covered servicemember" 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.
4. The term "next of kin" used with respect to an individual, means the nearest blood relative of that individual.
5. The term "outpatient status," with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to (i) a military medical treatment facility as an outpatient; or (ii) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
6. The term "parent" means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.
7. The term "son or daughter" means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who

is (i) under 18 years of age or (ii) 18 years of age or older and incapable of self-care because of mental or physical disability. "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in several of the activities of daily living.

8. The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves
  - (i) inpatient care in a hospital, hospice, or residential medical care facility and any period of incapacity or treatment in connection with inpatient care; or
  - (ii) continuing treatment by a healthcare provider.
  
9. The term "continuing treatment by a health care provider" means one or more of the following:
  - (i) A period of incapacity lasting more than three full, calendar days, and subsequent period of treatment relating to the same condition that also involves
    - (a) Two or more treatments by a health care provider, one of which occurs within 7 days of the first day of incapacity and both of which occur within 30 days of the first day of incapacity, unless extenuating circumstances exist; or
    - (b) treatment by a healthcare provider on at least one occasion, which must occur within 7 days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the healthcare provider.
  - (ii) Any period of incapacity due to pregnancy or for prenatal care;
  - (iii) Any period of incapacity due to a chronic serious health condition which
    - (a) requires periodic visits of at least twice per year for treatment by a health care provider;
    - (b) continues over an extended period of time; and

- (c) may cause episodic rather than a continuing period of incapacity.
- (iv) A period of incapacity which is permanent or long-term due to a condition which for treatment may not be effective and which requires the continuing supervision of a healthcare provider;
- (v) Any period of absence to receive multiple treatments (including recovery time) by a healthcare provider for:
  - (a) restorative surgery after an accident or injury;
  - (b) a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical treatment, such as cancer, severe arthritis, or kidney disease.
- (vi) The term “treatment by a health care provider” does not include routine physical examinations, eye examinations, or dental examinations.

Voluntary or cosmetic treatments which are not medically necessary are not serious health conditions, unless inpatient hospital care is required.

10. The term "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 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.
11. The term “single 12-month period,” in the case of Military Caregiver Leave, means the 12-month period measured forward from the date that the employee’s first leave to care for the covered service member begins.
12. The term "reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

## C. Types of FMLA Leave

### 1. In General

Except as hereinafter provided, an eligible employee shall be entitled to a total of 12 workweeks of unpaid leave during the rolling 12-month period measured backward from the date the employee takes leave for one or more of the following:

- (a) because of the birth of a son or daughter of the employee and in order to care for such son or daughter;
- (b) because of the placement of a son or daughter with the employee for adoption or foster care.
- (c) because the employee is needed to care for his spouse, son, daughter or parent, if such spouse, son, daughter, or parent has a serious health condition.
- (d) because of a serious health condition that makes the employee unable to perform the functions of his or her position.
- (e) because of any qualifying exigency as defined in Department of Labor regulations, (hereinafter Qualifying Exigency Leave), arising out of the fact that the spouse, or a son, daughter, or parent of the employee is a covered military member 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.

2. Military Caregiver Leave.

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness shall be entitled to a total of 26 workweeks of leave during a single 12-month period to care for the servicemember. During the single 12-month period, an eligible employee shall be entitled to a combined total of 26 workweeks of leave for any FMLA qualifying reason, no more than 12 weeks of which may be for reasons other than to care for a covered servicemember with a serious injury or illness.

D. Additional Provisions.

1. Husband and Wife Both Employed by School Board.

A husband and wife who are employed by the School Board may only take a combined total of 12 weeks of leave during the school year for the birth or placement of a child or to care for a parent (but not a parent-in-law) with a serious health condition.

2. The entitlement to leave for a birth or placement of a son or daughter shall expire 12-months after such birth or placement.
3. Leave taken intermittently or on a reduced schedule
  - (a) Leave for the birth or placement of a child shall not be taken by an employee intermittently or on a reduced leave schedule without the written authorization of the Division Superintendent.
  - (b) Leave for the serious health condition of an employee, an employee's spouse, parent or child, or a servicemember may be taken intermittently or on a reduced leave schedule when medically necessary. If such leave is foreseeable based on planned medical treatment, the Division Superintendent may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and, in the Division Superintendent's opinion, better accommodates recurring periods of leave than the regular employment position of the employee.

3. Substitution of Paid Leave

- (a) An employee must substitute any accrued paid vacation leave, personal leave or family leave for unpaid leave under paragraphs C 1(a), (b), (c), (e), and C2 above.
- (b) An employee must substitute any accrued paid vacation leave, personal leave, or sick leave for unpaid leave for under paragraph C1(d) above.

E. Foreseeable Leave

1. Notice

In any case in which the necessity for leave is foreseeable based on an expected birth or placement, or planned medical treatment, the employee

shall request such leave not less than 30 days before the date leave is to begin, except that if the date of the birth or placement, or medical treatment, requires leave to begin in less than 30 days, the employee shall provide as much notice as is practicable.

If the necessity for leave because of a qualifying exigency arising from the fact that a family member is on active duty or has been notified of an impending call to active duty is foreseeable, the employee shall give such notice to the school division as is reasonable and practicable.

2. Duties of Employee

In any case in which the necessity for leave for the serious health condition of an employee, of an employee's spouse, parent or child, or of a servicemember is foreseeable, based on planned medical treatment, the employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the School Division.

3. Requests for Leave

Requests for leave shall be made on forms provided by the Division Superintendent.

F. Certification and Other Opinions

1. Certification of Serious Health Condition

- (i) An employee requesting leave for the employee's own serious health condition or to care for a spouse, son, daughter, or parent with a serious health condition must submit a medical certification on the form provided by the Division Superintendent.
- (ii) In any case in which the Division Superintendent has reason to doubt the validity of the certification for leave, he may require, at the School Board's expense, that the employee obtain a second opinion of a provider designated or approved by the Division Superintendent concerning any information in the certification.
- (iii) If the second opinion differs from the original certification, the Division Superintendent may require, at the School Board's expense,

that the employee obtain a third opinion of a provider jointly approved by the employee and the Division Superintendent. The third opinion shall be final and binding.

- (iv) The Division Superintendent may require an employee to obtain subsequent certifications on a reasonable basis.

2. Certification for Military Caregiver Leave

- (i) An employee requesting leave to care for a covered servicemember with a serious injury or illness must submit to the Division Superintendent either
  - (a) a medical certification on a form provided by the Division Superintendent; or
  - (b) Initial Travel Orders or Initial Travel Authorizations issued to a family member by the military to join an injured or ill servicemember at his or her bedside, pursuant to the regulations adopted by the Secretary of Labor.

3. Certification for Qualifying Exigency Leave

- (i) An employee requesting Qualifying Exigency Leave may be required to furnish to the Division Superintendent the following
  - (a) a copy of the covered military members active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the active duty service; and
  - (b) a Qualifying Exigency Certification on the form provided by the Division Superintendent.

4. Submission of Certifications.

- (a) Certifications required under paragraphs F1-F3 shall be submitted to the Division Superintendent with 15 days of the employee's request for leave.

- (b) The failure of an employee to provide the certification required under paragraphs F1, F2, or F3 will result in denial of the employee's request for FMLA leave.

G. Employment and Benefits Protection

1. An employee who takes leave under this regulation shall, upon return from said leave, be restored to the position he or she left or to an equivalent position.
2. An employee taking leave under this regulation shall not lose any benefits accrued prior to taking leave, but no such employee shall accrue seniority or benefits while on unpaid leave.
3. An employee who takes leave for his own serious health condition shall provide the Division Superintendent with a certification from the health care provider, on the prescribed form, that the employee is able to resume work.
4. The Division Superintendent may require employees on leave under this regulation to report periodically on the status and intention of the employee to return to work.
5. The School Board may recover any premiums that it paid for maintaining benefit coverages for an employee during the period of unpaid leave hereunder if the employee does not return to work after the expiration of the leave, except for health benefit premiums when the employee does not return to work because of the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under paragraphs C1(c), (d), or C2 above, or other circumstances beyond the employee's control. The Division Superintendent may require the employee to provide a certification from a health care provider if the employee does not return to work because of reasons specified in paragraph C1(c), (d) or C2. If the employee fails to provide the requested certification within thirty (30) days of the request, the employee will be obligated to repay all health benefit premiums paid by the School Board.

H. Additional Rules for Instructional Employees

1. In addition to the requirements set forth above, an eligible employee employed principally in an instructional capacity shall comply with the requirements specified in this paragraph.
2. An employee who requests leave under paragraphs C1(c) or (d) that is foreseeable based on planned medical treatment and that would last more than 20 percent of the working days in the following 12-month period must elect either:
  - (i) to take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment; or
  - (ii) to transfer temporarily to an alternative position, if available and offered by the Division Superintendent, for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave than the regular position.
3. If the employee begins leave for any qualifying reason more than 5 weeks prior to the end of the semester, the Division Superintendent may require the employee to continue taking leave until the end of the semester if:
  - (i) the leave is of at least 3 weeks duration; and
  - (ii) the return to work would occur during the 3-week period before the end of the semester.
4. If the employee begins leave under paragraphs C1(a), (b), (c) or C2 during the period that commences 5 weeks prior to the end of the semester, the Division Superintendent may require the employee to continue taking leave until the end of the semester if:
  - (i) the leave is of greater than 2 weeks duration; and
  - (ii) the return to work would occur during the 2-week period before the end of the semester.
5. If an employee begins leave under paragraphs C1(a), (b), (c) or C2 during the period that commences 3 weeks prior to the end of the semester and the duration of leave is greater than 5 working days, the Division Superintendent may require the employee to continue to take leave until the end of the semester.

