

## **General Personnel**

### **Administrative Procedure – Family and Medical Leave**

#### **Definitions**

In the absence of a relevant provision in this procedure, or in the event of a conflict, Board policy and federal law will control with federal law being the definitive precept.

**Continuing treatment** means 2 or more visits to, or ongoing supervision by, a health care provider (29 C.F.R. § 825.114).

**FMLA** refers to the Family and Medical Leave Act of 1993, implemented by 29 C.F.R. Part 825.

**Health care providers** are: licensed doctors of medicine or osteopathy; licensed podiatrists, dentists, clinical psychologists, optometrists, and chiropractors; licensed nurse practitioners; nurse-midwives; clinical social workers; Christian Science practitioners listed by the First Church of Christ Science; and any health care provider recognized by the employer's group health plan benefits' manager as valid health care providers (29 C.F.R. §825.118).

**Instructional employees** are those whose principal function is to teach and instruct students (29 C.F.R. §825.600).

**Intermittent leave** is leave taken in separate blocks of time due to a single illness or injury and may include leave of periods from an hour or more to several weeks (29 C.F.R. §825.203.)

**Parent** means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee has a child; the term does not include "in-law" (29 C.F.R. §825.113).

**Reduced leave schedule** is a leave schedule that reduces an employee's usual number of working hours per work week, or hours per workday (29 C.F.R. §825.203).

**Serious health condition** means an illness, injury, impairment, or physical or mental condition that involved (29 C.F.R. §825.114):

1. Inpatient care, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or
2. Continuing treatment by a health care provider, plus:
  - a. A period of incapacity of more than 3 consecutive calendar days, and either: treatment 2 or more times by a health care provider, or treatment by a health care provider on at least one occasion which results in a "regimen of continuing treatment;"
  - b. Any period of incapacity due to pregnancy, or for prenatal care;
  - c. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition, e.g., asthma, diabetes, epilepsy;
  - d. A permanent or long-term period of incapacity due to a condition for which treatment may not be effective, e.g., Alzheimer's a severe stroke, or the terminal stages of a disease; or
  - e. Any period of absence to receive multiple treatments by a health care provider, either for restorative surgery or for a condition that would likely result in a period of incapacity of more than 3 consecutive calendar days if left untreated.

Excluded from the term **serious health condition** are: most cosmetic treatments; routine physical, dental, or eye examinations; and common cold, flu, earache, upset stomach, minor ulcer, headache other than migraine, routine dental or orthodontia problems, and periodontal disease (29 C.F.R. §825.114(b) and (c)).

**Son or daughter** include biological, adopted, foster, step child, ward, and child of a person standing in loco parentis, provided that the individual is under 18 year of age or is any age if incapable of self care due to mental or physical disability (29 C.F.R. §825.113).

**Spouse** means husband or wife as defined under Illinois law (29 C.F.R. §825.113).

#### Leave Description

The use of unpaid family and medical leave is subject to the following:

1. It may be used for up to a combined total of 12 weeks each year, beginning September 1 and ending August 31 of the next year (29 C.F.R. §825.200).
2. Other available paid vacation, personal, or family leave will be substituted for family and medical leave necessitated by birth, adoption/foster care placement, or a family member's serious health condition. Other available paid vacation, personal, or sick leave will be substituted for family and medical leave necessitated by a family member's or employee's own serious health condition. The district will pay family leave or sick leave only under circumstances permitted by the applicable leave plan (29 C.F.R. §825.207).
3. To be eligible for family and medical leave, an employee must either (29 C.F.R. §§825.110 and 825.111):
  - a. Have been employed by the District for at least 12 months (the 12 months need not be consecutive) and have been employed for at least 1,250 hours of service during the 12 month period immediately before the beginning of the leave; or
  - b. Be a full-time classroom teacher.
4. Family and medical leave is available in one or more of the following instances (29 C.F.R. §§825.112 and 825.200):
  - a. The birth and first-year care of a son or daughter;
  - b. The adoption or foster placement of a child;
  - c. The serious health condition of an employee's spouse, parent, or child; and
  - d. The employee's own serious health condition.
5. School Board policy will govern family and medical leaves, but the FMLA, and its implementing regulations, will be the final authority.

#### Procedure to Request Leave

1. If possible, an employee shall notify the Superintendent or designee of the date the employee will need a family and medical leave at least 30 days before a leave is to begin. If 30 days' notice is not practicable, the employee should give the notice at least two business days after the need becomes known to the employee. Employees will request a leave of absence using the Family and Medical Leave Request and Response form provided by the district. (29 C.F.R. §825.302).
2. Upon the Superintendent or designee's request, an employee must support his or her request for a leave necessitated by a family member's or the employee's own serious health condition, with a certificate completed by the employee's or family member's health care provider. The certificate must be provided to the Superintendent or designee within 15 calendar after the request and on the District's form. Failure to provide the certification may result in a denial of the leave request (29 C.F.R. §§825.208, 825.302, 825.305, and 825.311).
3. Intermittent or Reduced-Leave Schedule

- a. Leave increments are limited to one-hour period of time (29 C.F.R. §825.203(d).
- b. An employee should follow the regular notice procedures when requesting an intermittent or reduced-hour leave. If the leave is taken because of the birth or placement of a child, leave may be taken intermittently or on a reduced schedule only if the Superintendent or designee agrees. If the leave is taken to care for a sick family member or for the employee's own serious health condition, leave may be taken intermittently or on a reduced schedule when medically necessary (29 C.F.R. §825.203(a)).
- c. Instructional employees taking leave which is 20 percent or less of the working days during the leave period, and all non-instructional employees, may be required to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of intermittent or reduced-schedule leave (29 C.F.R. §§825.203, 825.204, 825.205, and 825.601). The alternative position must be equivalent in pay and benefits; benefits will not be eliminated even though they are not available to part-time employees (29 C.F.R. §825.204.).
- d. If an instructional employee requests intermittent leave or leave on an 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 Superintendent or designee may request the instructional employee to choose either to (29 C.F.R. §825.601):
  1. Take leave for a period(s) 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 the equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

#### Response to Leave Request

1. Regardless of the type of leave requested, the Superintendent or designee must (29 C.F.R. §825.208):
  - a. Determine the reason for any requested leave;
  - b. Decide whether it is a FMLA-qualifying leave; and
  - c. Decide whether the District will require the employee to substitute available paid leave for family and medical leave.
2. Regardless of the type of leave requested, if the leave qualifies as a FMLA leave, the Superintendent or designee must give the employee a completed "Family and Medical Leave Request and Response Form" describing his or her rights and obligations while on FMLA leave (29 C.F.R. §825.301) (*Use Appendix D to 29 C.F.R. Part 825, Prototype Notice*). This notice must be given within 2 business days of the employee's request, unless the Superintendent or designee has insufficient information to make a determination, in which case the notice must be given as soon as sufficient information is provided (*Id.*). An initial oral notice that the leave will count against the annual FMLA leave entitlement and of any leave substitution requirement, does not relieve the Superintendent or designee of this requirement.
3. The Superintendent will submit the "Family and Medical Leave Request and Response Form" to the Board of Education for approval. After the monthly Board meeting, the Superintendent or designee will notify the employee in writing of the Board's decision regarding the request.
4. The Superintendent or designee may challenge the adequacy of a medical certification and require the employee to obtain a second opinion from a second health care provider, paid for by the District (29 C.F.R. §825.307). If a second medical opinion conflicts with the first, the

- Superintendent or designee may require a third opinion, paid for by the District. The third health care provider must be designated or approved jointly by the District and the employee. The third opinion is final and binding (29 C.F.R. §825.308).
5. The Superintendent or designee shall inform an instructional employee whenever the employee will be required to wait to return to work until the next semester because (29 C.F.R. §825.602):
    - a. The employee's leave begins more than 5 weeks before the end of a term; the leave will last at least 3 weeks; and the employee would return during the 3-week period before the end of the semester;
    - b. The employee's leave, for a purpose other than the employee's own serious health condition, begins during the 5 week period before the end of a term; the leave will last more than 2 weeks; and the employee would return during the 2 week period before the end of the term; or
    - c. The employee's leave, for a purpose other than the employee's own serious health condition, begins during the 3-week period before the end of a term and the leave will last more than 5 working days.

- If an employee chooses, or is required, to take leave for *periods of a particular duration* in case of intermittent or reduced-schedule leave, or is required to continue taking leave until the end of a school term, the entire period of leave taken will count as a FMLA leave (29 C.F.R. §825.603).
6. The Superintendent or designee shall ensure that work and teaching schedules are arranged so that an employee returning from a family and medical leave will be given an equivalent position to his or her position before the leave, subject to the District's assignment and reassignment policies and practices (29 C.F.R. §825.604).

#### Posting and Notice to Employees

School principals shall post a notice explaining the FMLA's provisions in a location where it can be readily seen by employees and applicants for employment (29 C.F.R. §825.300). The FMLA Fact Sheet, published by the Department of Labor, Wage and Hours Division, shall be incorporated into any employee handbook or provided to employees (29 C.F.R. §825.301).

#### Recordkeeping

The Superintendent shall ensure that records are kept according to the requirements contained in 29 C.F.R. §825.500.

LEGAL REF.:           Family and Medical Leave Act, 29 U.S.C. §2601 et seq.; 29 C.F.R. Part 825.

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