

### **Family & Medical Leaves of Absence (FMLA)**

The function of this policy is to provide employees with a general description of their rights under the Family Medical Leave Act of 1993 (FMLA). In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

An employee who has worked for the District for at least 12 months is eligible for 12 work weeks (or up to 26 work weeks of military caregiver leave to care for a covered servicemember with a serious injury or illness) of FMLA leave during a 12-month period, provided the employee worked at least 1,250 hours in the 12 months preceding the beginning of the leave.

An eligible employee may take FMLA leave for:

- A. the birth and first-year care of a child;
- B. the adoption or foster placement of a child;
- C. to care for an employee's spouse, parent or child with a serious health condition;
- D. the employee's own serious health condition that keeps the employee from performing the essential functions of his/her job;
- E. any qualifying exigency (as defined in applicable Federal regulations) arising out of the fact that the staff member's spouse, son, daughter, or parent is on covered active duty (or has been notified of an impending call or order to active duty) in the Armed Forces. Covered active duty means duty during deployment with the Armed Forces to a foreign country;
- F. Military caregiver leave (also known as covered servicemember leave) to care for an injured or ill servicemember or veteran.
  - a. An employee whose spouse, son, daughter, parent or next of kind (closest blood relative of the injured or recovering servicemember) may take up to 26 weeks in a single 12-month period to take care of an injured or ill servicemember or veteran.
  - b. The term "covered servicemember" means:
    - i. 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
    - ii. a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and 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 (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
  - c. The term "serious injury or illness":
    - i. in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in 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

- ii. (b) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered servicemember, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on an active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

In cases in which the Board employs both spouses, the total amount of FMLA leave is twelve (12) weeks for the couple, except when the leave is due to the serious health condition of either spouse or a child. If both spouses wish to take leave to care for a covered injured or ill servicemember, the husband or wife may only take a combined total of 26 weeks of leave.

Twelve (12) month period is defined as the twelve (12) month period measured forward from the date the staff member's first FMLA leave begins (i.e. the "leave year" is specific to each individual staff member). An eligible employee can take up to 12 weeks leave for the reasons A through E above. An eligible employee can take up to 26 weeks for reason F above during a single 12 month period. FMLA already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

Serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves:

- A. Inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or
- B. Continuing treatment by a healthcare provider, including:
  - 1. a period of incapacity of more than three (3) consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition, that also involves either treatment two (2) or more times, within thirty (30) days of the first day of incapacity, by a healthcare provider, or treatment by a healthcare provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of a healthcare provider;
  - 2. any incapacity due to pregnancy or for prenatal care;
  - 3. any period of incapacity or treatment for such incapacity due to a chronic serious health condition;
  - 4. a period of incapacity, which is permanent or long-term due to a condition for which treatment may not be effective;
  - 5. any period of absence to receive multiple treatments by a healthcare provider either for restorative surgery after an accident or other injury, or for a condition

that would likely result in a period of incapacity of more than three (3) consecutive days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

- C. Conditions for which cosmetic treatment are administered are not "serious health conditions" unless inpatient hospital care is required or complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomachs, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, periodontal disease, etc., are conditions that do not meet this definition and do not qualify for FMLA leave.

### **Notice**

Whenever the need for FMLA leave is foreseeable, the staff member shall provide the Superintendent with thirty (30) day's notice. If there is insufficient time to provide such notice because of the need for treatment, the staff member shall provide such notice within 15 days of the request or provide a reasonable explanation for the delay. The employee must make a reasonable effort to schedule the leave so as not to unduly disrupt the regular operation of the District.

### **Certification**

The District may require the employee to provide certification from a health care provider containing specific information required under the law if he/she requests a medical leave. At the District's expense a second, and third (if necessary), opinion may be required.

Upon the employee's return to work, the District will require that the employee present a fitness statement from the employee's health care provider certifying that the employee is able to return to work.

### **Recertification**

Recertification may be required for the serious health condition of the employee or the employee's family member no more frequently than every 30 days and only when circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the District may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. Finally, staff members must provide a new medical certification each leave year for medical conditions that last longer than one (1) year.

### **Benefits**

The District may require the employee to use accrued paid vacation, personal or sick leave for purposes of a family leave.

During FMLA leave, the Board shall maintain the staff member's current coverage under the Board's group health insurance program on the same conditions, as coverage would have been provided if the staff member had been continuously working during the leave period. If the staff member was paying all

or part of the premium payments prior to going on FMLA leave, the staff member must continue to pay his/her share during the leave.

The use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of the staff member's leave, but the employee is not entitled to accrue employment benefits during the unpaid leave period. The staff member shall not accrue any sick leave, vacation, or other benefits during a period of unpaid FMLA leave.

### **Intermittent and Reduced Leave**

A staff member may take FMLA leave on an intermittent or reduced-leave schedule for reasons A and B on page one, when medically necessary as indicated in reasons C, D, and F on page one, or for Qualifying Exigency Leave (reason (E) on page one). Regardless, the taking of such leave results in the total reduction of the twelve (12) or twenty-six (26) weeks only by the amount of leave actually taken. If the intermittent or reduced-leave schedule is foreseeable based on planned medical treatment, the Superintendent may require the staff member to transfer temporarily to an available alternative position, which better accommodates recurring periods of leave. The alternative position shall have equivalent pay and benefits but not necessarily equivalent duties.

### **Instructional Employees**

Instructional staff members (i.e. individuals whose principal function is to teach and instruct students in a class, a small group, or an individual setting) who request intermittent leave or a reduced-leave schedule which would exceed twenty percent (20%) of the total number of working days over the period of anticipated leave must elect either to:

- A. take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- B. transfer temporarily to an available alternative position offered by the Superintendent for which the instructional staff member is qualified, and that has equivalent pay and benefits and that better accommodates the recurring periods of leave than the staff member's regular position.

Any leave or return from leave during the last five (5) weeks of an academic term shall be reviewed individually by the Superintendent to minimize disruption to the students' program.

### **Restoration**

Upon return from any FMLA leave, the Board will restore the staff member to his/her former position or to a position with equivalent employment benefits, pay and conditions of employment.

### **Failure to Return**

If the staff member fails to return to work at the end of the leave for reasons other than the continuation, recurrence, or onset of a serious health condition of the staff member or of the staff

member's immediate family member, or for circumstances beyond the control of the staff member, the staff member shall reimburse the Board for the health insurance premiums paid by the Board during the unpaid FMLA leave period.

A staff member who fraudulently obtains FMLA leave is not protected by this policy's job restoration or maintenance of health benefits provisions.

Adopted 1/23/06  
Revised 7/16/2012