

CLARK COUNTY SCHOOL DISTRICT REGULATION

R-4359

FAMILY AND MEDICAL LEAVE ACT: ALL EMPLOYEES

The Family and Medical Leave Act (FMLA) entitles eligible employees to take unpaid, job protected leave for specified family and medical reasons. Eligible employees are entitled to take up to 12 workweeks of leave for certain family and medical reasons and up to 26 workweeks of leave for military caregiver leave in a 12-month period. When spouses work for the same employer and each spouse is eligible to take FMLA leave, the FMLA limits the combined amount of leave they may take for some, but not all, FMLA-qualifying leave events. This regulation is only a summary and there may be other rules, including specific definitions, applicable to leave under the Act.

Employees may substitute accrued paid leave for some or all of the period of FMLA leave. Paid leave may be substituted by utilizing accrued paid leave consistent with District regulations and applicable respective negotiated agreements. The District requires concurrent utilization of available and applicable paid leave when on FMLA leave.

I. Eligibility

Only eligible employees are entitled to take FMLA leave. To be eligible, an employee must have worked for the District for at least 12 months (which need not be consecutive) and have worked at least 1,250 hours during the 12 months immediately preceding the commencement of FMLA. Eligibility is determined by a "rolling" 12-month period measured backward from the date an employee first uses the leave for an FMLA qualifying event.

II. Benefits

The District will continue to contribute its portion of the appropriate group health insurance coverage in force at the time the FMLA leave begins. An employee on unpaid FMLA leave must make arrangements to pay the required monthly contribution to the appropriate insurance administrator to maintain insurance coverage. If the employee fails to return from leave, the District may recover (as provided for in the Family and Medical Leave Act of 1993) any premiums that the District paid for maintaining group health insurance coverage during FMLA leave under certain circumstances.

III. Qualifying Events

Eligible employees may access a maximum of 12 workweeks of FMLA leave per "rolling" 12-month period for one or more of the following qualifying events or conditions:

- A. The birth of a child and to bond with the newborn child within one year of birth, placement of a child for adoption or foster care and to bond with the newly placed child within one year of placement (spouses employed by the District may only take a combined 12 workweeks of leave);
- B. A serious health condition that makes the employee unable to perform the functions of his or her job;
- C. To care for the employee's spouse, son, daughter, or parent who has a serious health condition (spouses employed by the District may only take a combined 12 workweeks of leave to care for a parent);
- D. Exigency

Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or called to covered active duty status.

- 1. For members of the regular armed forces, duty during deployment of the member with the armed forces to a foreign country; or
- 2. For members of the reserve components of the armed forces (members of the National Guard and Reserves), duty during deployment of the member with the armed forces to a foreign country under a call or order to active duty in support of a contingency operation.

IV. Servicemember Care

An eligible employee is entitled to take up to 26 workweeks of FMLA leave during a single 12-month period to care for a covered servicemember with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember. Leave to care for a servicemember shall only be available during a single 12-month period and when combined with other FMLA leave, may not exceed 26 workweeks during the single 12-month period.

The single 12-month period begins on the first day an eligible employee takes leave to care for the injured servicemember. (Spouses employed by the District may only take a combined 26 workweeks of leave under this category).

- A. A current member of the armed forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list, for a serious injury or illness; or
- B. A veteran of the armed forces (including the National Guard or Reserves) discharged within the five-year period before the family member first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of a covered servicemember.

V. Leave Entitlement

FMLA leave usually will be taken for a period of consecutive days, weeks or months. However, employees also are entitled to take FMLA leave intermittently or on a reduced leave schedule when medically necessary due to a serious health condition of the employee or covered family member or the serious injury or illness of a covered servicemember.

- A. If FMLA leave is for the birth, adoption, or foster placement of a child, use of intermittent or reduced schedule leave requires the approval of the employee's administrative supervisor, and the appropriate Human Resources Division administrator.
- B. When leave is needed to care for an immediate family member, covered servicemember or the employee's own illness and is for planned medical treatment, the employee must make reasonable efforts to schedule treatment so as not to unduly disrupt the operation of the District and its programs.
 - 1. When an unscheduled FMLA absence is unavoidable, employees must provide notice to his/her administrative supervisor as soon as practicable, If possible, employees must comply with the outlined call-in procedures prior to the employee's report time. Employees must provide sufficient information to allow the District to determine whether the FMLA may apply which may include whether the employee is unable to perform their job functions, whether they are hospitalized or under the continuing care of a health care provider and the anticipated duration of the absence.

- C. An employee taking FMLA intermittently may be required to transfer temporarily, during the period that the intermittent or a reduced leave schedule is required, to an available alternate assignment for which the employee is qualified and which better accommodates the recurring period of intermittent leave. The employee will receive equivalent pay and benefits.
 - D. Intermittent leave or a reduced leave schedule must be taken in the smallest increments utilized by the District's payroll system.
- VI. Taking another job while on FMLA or any other authorized leave of absence without proper authorization is grounds for disciplinary action, up to and including dismissal.

VII. Notice

An employee requesting FMLA shall submit a written request for FMLA leave at least 30 days prior to the effective date of the FMLA unless a medical emergency precludes such advance notice. The employee must provide enough information for the District to reasonably determine whether the FMLA may apply to the leave request. When the employee has no reasonable excuse for not providing at least 30 days advance notice, the District may delay the FMLA leave until 30 days after the date of notice is provided. When the employee could not have provided 30 days advance notice, but has no reasonable excuse for not providing a shorter period of advance notice, the District may delay the FMLA leave by the amount of time the employee delayed in notifying the District.

When the need for FMLA is unforeseeable, the employee must submit a written request for FMLA to the Human Resources Division as soon as possible and practical.

- VIII. The District will provide employees who request FMLA leave with a notice of their eligibility for the leave or reason why they are not eligible within five business days of a request for leave. Eligible employees will be provided with a statement of their Rights and Responsibilities under the FMLA, an Employee Request form, and a Medical Certification form.
- IX. Employees who request FMLA leave due to his/her own or a family member's serious health condition must submit a Medical Certification form completed by the health care provider to support the leave request. The Medical Certification form must outline the need for the employee to be absent, the date on which the serious health condition commenced,

the probable duration of the condition, the appropriate medical facts regarding the condition, and other pertinent medical facts. The completed form should be returned to the District within 15 calendar days after it is requested, or as soon as possible. The employee is responsible for paying for the cost of the medical certification and for making sure the certification is provided to the District.

A. Health Conditions

The most common serious health conditions that qualify for FMLA leave are:

1. Conditions requiring an overnight stay in a hospital or other medical care facility;
2. Conditions that incapacitate you or your family member (for example, unable to work or attend school) for more than three consecutive days and have ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication);
3. Chronic conditions that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year; and
4. Pregnancy (including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest).

B. Unless complications arise which satisfy the meaning of “serious health condition,” minor illnesses including but not limited to the common cold, flu, ear aches, upset stomach, minor ulcers, headaches, and routine dental procedures do not meet the definition of a “serious health condition.”

If the certification is incomplete or insufficient, the District will give the employee a written notice stating what additional information is necessary to make the certification complete and sufficient. The employee must provide the additional information to the District within seven calendar days. A certification is considered “incomplete” if one or more of the applicable entries on the form have not been completed. A certification is considered “insufficient” if the information provided is vague, unclear, or non-responsive. The District may contact the health care provider to authenticate or to clarify the certification.

If the employee does not provide the requested certification within the time required or fails to provide a complete and sufficient certification despite the opportunity to cure any deficiencies, the District may deny the employee's request for FMLA leave.

The District may, at its expense, request a second opinion that FMLA leave is necessary. A third medical opinion by a doctor, jointly designated by the District and the employee, may be obtained, at the District's expense, if the second opinion conflicts with the first.

- X. Within five business days of having enough information to determine whether the requested leave is FMLA eligible, the District will provide a Designation Notice. The Designation Notice will inform the employee of the District's designation determination, substitution of paid leave and/or fitness for duty requirements. Additionally, the notice will include the amount of leave that is designated and counted against the employee's FMLA entitlement. The FMLA leave begins when the qualifying event commenced; whether accrued earned leave or unpaid leave was taken. This designation may be retroactive.

If the request for FMLA leave is to care for a covered family member, the employee must describe the care he/she will provide to the covered family member and estimate leave needed on the Medical Certification form.

If the request is for intermittent FMLA, the Medical Certification form must also include information sufficient to establish the medical necessity for intermittent leave and the dates on which treatment is expected to be given, the duration of treatment, and that such treatment is not available at a time which would not require leave from duty.

Employees absent for their own medical condition will be required to provide documentation prior to the expiration of the approved FMLA leave of their fitness to return to work. Employees failing to provide the Fitness-for-Duty Certification cannot resume work until such certification is provided. A Fitness-for-Duty Certification is included with the notice of eligibility.

At the sole discretion of the District, any absence that qualifies as FMLA leave may be designated as FMLA leave. The District may retroactively designate the absence as qualified under the FMLA with proper notice to the employee. The notice must state the employee's eligibility for leave and whether the absence qualifies for FMLA protection.

While on leave, the employee may be required to furnish the District with periodic reports of the employee's status and intent to return to work.

XI. Recertification

The District may request an employee to recertify a serious health condition every 30 days for chronic/long-term illness or pregnancy, if the employee is absent during that period. A recertification may be requested in fewer than 30 days if:

- A. The employee asks for an extension of leave;
- B. Circumstances have changed significantly; or
- C. The District has doubts about the employee's FMLA status (e.g., Monday/Friday absences).

The recertification must be provided within the time requested by the District. The same information required on the original medical certification may be requested for the recertification. The District may provide the health care provider with a record of the employee's absence pattern and ask if that is consistent with the employee's medical records. Recertification is at the employee's expense.

- XII. The FMLA has special rules for employees employed principally in an instructional capacity. The special rules for instructional employees affect intermittent leave, leave on a reduced schedule, and leave near the end of an academic term (semester).

XIII. Job Restoration

Employees returning to work from FMLA leave will be returned to the same or an equivalent position held prior to the leave, unless the position has ceased to exist because of business necessity. If the employee is unable or does not return to work at the end of the FMLA leave, all entitlement and rights under the FMLA cease at that time. The employee is no longer entitled to any further job restoration rights under the FMLA. An employee who fails to return to the assigned position following expiration of the leave, and who does not qualify for additional leave, may be terminated at the conclusion of the FMLA leave. Failure to report for duty is grounds for dismissal.

Certain "key employees" may not be eligible to be reinstated to the same or equivalent position at the conclusion of their FMLA leave. The District will notify such employees of their "key employee" status and the conditions under which they may be denied reinstatement, if applicable.

- XIV. An employee who takes FMLA leave does not earn service credit toward retirement and does not accumulate other benefits during the period of unpaid leave. If an employee has any questions concerning PERS credit or benefits, the employee should contact PERS directly.
- XV. An employee on FMLA leave is not entitled to unemployment compensation benefits during the leave period.
- XVI. The District will consider FMLA absences when determining eligibility for attendance bonuses.
- XVII. This regulation is based upon the Act and Final Rule of the United States Department of Labor, 29CFR825. It is not intended to be the complete explanation of the Act. An employee may review the Final Rule by securing a copy of the respective Federal Register. The Final Rule will be used as a source to clarify implementation, when necessary, and the decisions made by the appropriate administrator, Human Resources Division, regarding an employee's eligibility for FMLA will be based upon this regulation and the Final Rule.

The Act makes it unlawful for an employer to interfere with, restrain, or deny the exercise of rights under the Act or discharge or discriminate against persons for opposing unlawful practices or for involvement in proceedings under the Act. An employee may file a complaint with the U.S. Department of Labor or bring a private lawsuit for violation of the Act.

Legal Reference:	United States Department of Labor, 29CFR825
Review Responsibility:	Human Resources Division
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