

	ABERDEEN SCHOOL DISTRICT	NEPN Code: GCCAC-R
	POLICIES AND REGULATIONS	

FAMILY AND MEDICAL LEAVE - REGULATION

ELIGIBILITY

To be eligible for FMLA benefits, an employee must meet all the following conditions:

1. The employee must have been employed by the Aberdeen School District for at least twelve (12) months or 52 weeks. The twelve (12) months or fifty-two (52) weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven (7) years. Separate periods of employment will be counted if the break in service exceeds seven (7) years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
2. The employee must have worked at least 1,040 hours during the twelve (12) month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave should not be counted in determining the 1,040 hours eligibility test for an employee under FMLA.

TYPE OF LEAVE COVERED

Under the Act, an employee may take FMLA leave for one or more of the following reasons:

- 1) The birth of a child and in order to care for that child;
- 2) The placement of a child for adoption or foster care and to care for the newly placed child;
- 3) To care for an immediate family member (spouse, child, or parent – but not a parent “in-law”) with a serious health condition (described below); or
- 4) When the employee is unable to perform his/her job functions because of a serious health condition (described below).

For purposes of FMLA, a “serious health condition” means an illness, injury, impairment or physical or mental condition that involves either;

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility; or
- any period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves treatment by (or under the supervision of) a health care provider within the first seven (7) days of incapacity; or
- pregnancy, or prenatal care. A visit to the health care provider is not necessary for each absence; or

- any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or
 - any period of incapacity that is a permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a healthcare provider is required, rather than active treatment; or,
 - any absences to receive multiple treatments for restorative surgery or for a condition that likely would result in a period of incapacity of more than three consecutive days if not treated; or
 - any period of incapacity requiring an absence of more than three (3) calendar work days caused by a work-related injury.
- 5) Qualifying exigency leave for families of members of the National Guard or Reserves or of a Regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to active military duty or who is already on covered active duty may take up to twelve (12) weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following:

- 1) short-notice deployment;
- 2) military events and activities;
- 3) child care and school activities;
- 4) financial and legal arrangements;
- 5) counseling;
- 6) rest and recuperation (up to 15 days);
- 7) post-deployment activities; and
- 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee's twelve (12) week maximum of FMLA leave in a twelve (12) month period.

- 6) Military caregiver leave (also known as covered service member leave) to care for an ill or injured service member, veterans discharged within the past five (5) years, or a pre-existing injury or illness that was aggravated in the line of duty. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, National Guard or Reserves and members on the permanent disability retired list.

This leave may extend to up to twenty six (26) weeks in a single twelve (12) month period for an employee to care for a spouse, son, daughter, parent or next of kin covered service member with a serious illness or injury incurred in the line of duty on active duty. Next of kin is defined as the closest blood relative of the injured or recovering service member.

LEAVE FOR BIRTH, ADOPTION OR PLACEMENT OF CHILD

For employees using Maternity Leave, any period before and after the birth in which a mother is not able to work for medical reasons is considered a serious health condition. Maternity leave for the birth of a child (per negotiated agreement) is counted as part of the total 12 weeks permitted by the FMLA for serious illness/care of a newborn.

Where leave is requested for the birth, adoption or placement of a child, intermittent leave or working a reduced number of hours is not permitted unless the District and the employee jointly agree.

If a husband and wife are both employed by the District and leave is taken for the birth and care of a newborn child or adoption of a child or the placement of a child with the employees for foster care, or to care for a parent who has a serious health condition, the combined total leave for the husband and wife under the Act is limited to twelve (12) weeks. If a husband and wife both work for the District and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of twenty-six (26) weeks of leave.

Leave taken under the Act for the birth and care, adoption, or foster care placement of a child must be concluded within twelve (12) months after the birth, adoption, or placement of the child.

AMOUNT OF LEAVE

An eligible employee can take up to twelve (12) weeks for the FMLA circumstances (1) through (5) above under this policy during any twelve (12) month period. The company will measure the twelve (12) month period as a rolling twelve (12) month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the company will compute the amount of leave the employee has taken under this policy in the last twelve (12) months and subtract it from the twelve (12) weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee can take up to twenty-six (26) weeks for the FMLA circumstance (6) above (military caregiver leave) during a single twelve (12) month period. For this military caregiver leave, the District will measure the twelve (12) month period as a rolling twelve (12) month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of twenty-six (26) weeks available.

INTERMITTENT LEAVE OR A REDUCED WORK SCHEDULE

The employee may take FMLA leave in twelve (12) consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of twelve (12) workweeks (or twenty-six (26) workweeks to care for an injured or ill service member over a twelve (12) month period).

The District may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the District before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

EMPLOYEE STATUS AND BENEFITS DURING LEAVE

During FMLA leave, the District will continue the employee's health benefits during the leave period on the same level and under the same conditions as if the employee had continued to work. If the employee does not return to work after the expiration of leave, he/she will be required to reimburse the District for any insurance premiums paid by the District during the leave, unless the employee's failure to return is due to a serious health condition which prevents the employee from performing his/her job, or because of other circumstances beyond the employee's control.

While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the insurance premiums. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Finance Office by the 30th day of each month. If the payment is more than thirty (30) days late, the employee's health care coverage may be dropped for the duration of the leave. The District will provide fifteen (15) days' notification prior to the employee's loss of coverage.

Vacation leave, personal, or family illness leave taken under any employee agreement or policy of the District that qualifies for leave under the Act shall count against the twelve (12) weeks of unpaid leave under the Act. These leaves run concurrently with FMLA leave if the reason for FMLA is covered by this Policy. For qualifying leave under the Act, the employee, to the extent that any paid personal illness leave is available, must take such paid leave. NOTE: When vacation days or sick days are used during an FMLA leave, they will be paid according to the District's negotiated agreements regarding such benefits.

An employee who is using military FMLA leave for a qualifying exigency must use all paid vacation and personal leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid vacation, personal leave or sick leave (as long as the reason for the absence is covered by the company's sick leave policy) prior to being eligible for unpaid leave.

CERTIFICATION FOR THE EMPLOYEE'S SERIOUS HEALTH CONDITION

The District will require certification for the employee's serious health condition. The employee must respond to such a request within fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition (WH-380-E).

The District may directly contact the employee's health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. The District will not use the employee's direct supervisor for this contact. Before the District makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the District will obtain the employee's permission for clarification of individually identifiable health information.

The District has the right to ask for a second opinion if it has reason to doubt the certification. The District will pay for the employee to get a certification from a second doctor, which the District will select. The District may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the District will require the opinion of a third doctor. The District and the employee will mutually select the third doctor, and the District will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

CERTIFICATION FOR THE FAMILY MEMBER'S SERIOUS HEALTH CONDITION

The District will require certification for the family member's serious health condition. The employee must respond to such a request within fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition (WH-380-F).

The District may directly contact the employee's family member's health care provider for certification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. The District will not use the employee's direct supervisor for this contact. Before the company makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the company will obtain the employee's family member's permission for clarification of individually identifiable health information.

The District has the right to ask for a second opinion if it has reason to doubt the certification. The District will pay for the employee's family member to get a certification from a second doctor, which the District will select. The District may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the District will require the opinion of a third doctor. The District and the employee will mutually select the third doctor, and the District will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

CERTIFICATION OF QUALIFYING EXIGENCY FOR MILITARY FAMILY LEAVE

The District will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave (WH-384).

CERTIFICATION FOR SERIOUS INJURY OR ILLNESS OF COVERED SERVICE MEMBER FOR MILITARY FAMILY LEAVE

The District will require certification for the serious injury or illness of the covered service member. A covered service member is either a current member or a veteran of the Armed forces. The employee must respond to such a request within fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Service member (WH-385) or the DOL Certification for Serious Injury or Illness of a Veteran (WH-385-V).

RECERTIFICATION

The District may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every thirty (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 company may request recertification for the serious health condition of the employee or the employee's family member every six (6) months in connection with an FMLA absence. The District may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

PROCEDURE FOR REQUESTING FMLA LEAVE

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to their Supervisor and Director of Human Resources. Within five (5) business days after the employee has provided this notice, the Director of Human Resources will complete and provide the employee with the DOL Notice of Eligibility and Rights (WH-381).

When the need for the leave is foreseeable, the employee must provide the employer with at least thirty (30) days' notice. When an employee becomes aware of a need for FMLA leave less than thirty (30) days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the company's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

DESIGNATION OF FMLA LEAVE

Within five (5) business days after the employee has submitted the appropriate certification form, the Director of Human Resources will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice (WH-382).

INTENT TO RETURN TO WORK FROM FMLA LEAVE

On a basis that does not discriminate against employees on FMLA leave, the District may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

RETURN TO WORK

An employee who returns to work from an FMLA leave on or before the first business day following the expiration of the leave is entitled to return to his or her job or an equivalent position, unless the employee's employment would otherwise have been terminated regardless of the employee's FMLA leave. However, where the FMLA leave was due to the employee's own serious health condition, the returning employee must provide written certification from the health care provider that the employee is able to resume all of the essential functions and duties of his or her job. This requirement will be included in the employer's response to the FMLA request.

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