

COMPENSATION AND RELATED BENEFITS 6551 FAMILY AND MEDICAL LEAVE ACT

The Board, in accordance with the Family and Medical Leave Act of 1993 (as amended) (FMLA), gives eligible employees of the District the right to take unpaid leave for a period of up to 12 work weeks in a 12-month period as determined by the District.

Employees are "eligible" if (a) they have been employed by the District for at least 12-months, (b) have worked at least 1,250 hours during the twelve (12) months immediately preceding commencement of the leave, and (c) are employed at a District location where 50 or more employees are employed by the District within 75 miles of that location. This policy covers both full-time and part-time employees.

Eligible employees may be granted FMLA leave for up twelve (12) weeks for one or more of the following reasons:

- A. The birth of a child and care for the child (during the newborn's first 12 months);
- B. The placement of a child under the age of 18 with the employee for adoption or foster care, and to care for the newly placed child (during the first twelve months after the placement of the child);
- C. To care for a spouse, minor child or parent who has a "serious health condition" as defined by the FMLA;
- D. To care for an adult child who is also incapable of self-care due to a disability (regardless of date of the onset of disability) and has a "serious health condition" as defined by the FMLA; and/or
- E. A "serious health condition" of the employee, as defined by the FMLA, that prevents the employee from performing any one of the essential functions of his or her job.
 - 1) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves: (a) inpatient care; or (b) continuing treatment by a health care provider.
 - a) "Inpatient care" means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity, as defined by the law, or any

subsequent treatment in connection with such inpatient care.

- b) A serious health condition involving "continuing treatment by a health care provider" requires any one or more of the following:
- i. A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves: Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or (2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider;
 - ii. Any period of incapacity due to pregnancy or for prenatal care;
 - iii. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition;
 - iv. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; and
 - v. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider.
 - vi. Any "qualifying exigency" arising out of the fact that the employee's spouse, child, or parent is a military member in the United States Armed Forces, Reserves, or National Guard on Covered Active Duty or who has been notified of an impending call or order to Covered Active Duty status ("Military Member"). "Covered active duty," for members of the Regular Armed Forces, means duty during deployment of the Military Member with the Armed Forces to a foreign country. "Covered active duty," for members of National Guard or Reserves, means duty during the deployment of the Military Member with the Armed Forces to a foreign country under a call or order to active duty in support of a "contingency operation," as defined by law.

2) A "qualifying exigency" exists where one of the following events occurs:

- a) Short-notice deployment. To address any issue that arises from the fact that the Military Member is notified of an impending call or order to covered active duty, for a period of seven (7) or less calendar days from the date of notification;
- b) Military events and related activities. To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of the Military Member, or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of the Military Member;
- c) Childcare and school activities. To attend to certain childcare and school activities that are alternative childcare; (ii) providing childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis); (iii) enrolling in or transferring to a new school or daycare facility; and (iv) attending meetings with staff at a school or daycare facility;
- d) Financial and legal arrangements. To make or update financial and legal arrangements to address the Military Member's absence while on covered active duty or call to covered active duty status;
- e) Counseling. To attend counseling provided by someone other than a health care provider, for oneself, for the Military Member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the Military Member, or a child for whom the Military Member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, provided that the need for counseling arises from the covered active duty or call to covered active duty status of the Military Member;
- f) Rest and recuperation. To spend time with a Military Member who is on short-term, temporary, rest and recuperation leave during deployment for up to fifteen (15) calendar days;
- g) Post-deployment activities. To attend arrival ceremonies, reintegration briefings and events, and any other official

ceremony or program sponsored by the military for a period of 90 days following the termination of the Military Member's covered active duty status; and to address issues that arise from the death of a Military Member while on covered active duty status;

- h) *Parental Care*. To provide certain care to a Military Member's parent who is incapable of self-care, and where each instance of the care provided is necessitated by the Military Member's covered active duty. Covered activities provided to the parent of a Military Member under this provision include: (1) arranging for alternative care for a parent of the Military Member; (2) providing care for a parent of the Military Member on an urgent, immediate need basis; (3) admitting or transferring the parent of a Military Member to a care facility; and (4) attending meetings with staff at a care facility where the parent of a Military Member resides or stays; or
- i) *Additional activities*. To address other events which arise out of the Military Member's covered active duty or call to covered active duty status, provided that the District and employee agree that such leave shall qualify as an exigency, and both agree to the timing and duration of such leave.

Military Caregiver Leave

An eligible employee who is the spouse, son, daughter, parent, or next of kin (defined as the nearest blood relative) of a Covered Service member is entitled to up to 26 weeks of leave in a single 12-month period to care for a Covered Service member. The single 12-month period is measured from the first day the employee takes such FMLA leave.

"Next of kin" refers to a Covered Service member's nearest blood relative (other than the Covered Service member's spouse, parent, or child). Unless the Covered Service member has specifically designated in writing a particular blood relative as his or her nearest blood relative for the purposes of the Military Caregiver Leave, the following is the order of priority used to identify the nearest blood relatives of the Covered Service member: (a) blood relatives who have been granted legal custody of the Covered Service member; (b) siblings; (c) grandparents; (d) aunts and uncles; and (e) first cousins. When no such designation is made, and there are multiple family members with the same level of relationship to the Covered Service member, all such family members shall be considered the Covered Service member's next of kin and may take FMLA leave to provide care to the

Covered Service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the Covered Service member's only next of kin.

"Covered Service member" means:

- 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 otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness ("Current Service member"); or
- A veteran who: (1) is undergoing medical treatment, recuperation, or therapy for a serious injury or illness; (2) was a member of the Armed Forces (including a member of the National Guard or Reserves); (3) was discharged within the five-year period before the eligible employee first takes FMLA
- leave to care for him or her; and (4) was discharged or released from the Armed Forces under conditions other than dishonorable ("Covered Veteran"). An eligible employee must commence leave to care for a Covered Veteran within five years of the Covered Veteran's active duty service.

For purposes of Military Caregiver Leave, "serious injury or illness" means:

- In the case of a Current Service member, an injury or illness that was incurred by him or her in the line of duty on active duty in the Armed Forces (or that existed before the beginning of his or her active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the Covered Service member medically unfit to perform the duties of his or her office, grade, rank, or rating; and
- In the case of a Covered Veteran, an injury or illness that was incurred or aggravated by him or her in the line of duty, while on active duty in the Armed Forces, and which manifested itself before or after he or she became a veteran, and is:
- A continuation of a serious injury or illness that was incurred or aggravated when the Covered Veteran was a member of the Armed Forces and rendered him or her unable to perform the duties of his or her office, grade, rank, or rating;
- A physical or mental condition for which the Covered Veteran has received a VA Service Related Disability Rating ("VASRD") of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for leave;
- A physical or mental condition that substantially impairs the Covered Veteran's ability to secure or follow a substantially gainful occupation

by reason of a disability or disabilities related to military service or would do so absent treatment; or

- An injury, including a psychological injury, on the basis of which the Covered Veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

This military caregiver leave is available during a single 12-month period during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave. Military Caregiver Leave may be combined with other forms of FMLA-related leave providing a combined total of 26 weeks of possible leave for any single 12-month period; however, the other form of FMLA leave when combined cannot exceed 12 of the 26 weeks of combined leave. If an employee does not take all of his or her 26 workweeks of leave entitlement to care for a Covered Service member during the 12-month period, the remaining part of his or her 26 workweeks of leave is forfeited.

The Military Caregiver Leave is applied on a per-Covered-Service member, per-injury, basis such that an employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different Covered Service members or to care for the same Covered Service member with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any single 12-month period.

FMLA Leave Where Both Spouses Employed by the District

Spouses who are eligible for FMLA leave and who are both employed by the District may be limited to a combined, total of 12 or 26 weeks of leave, depending on the type of leave, during the applicable 12-month period if the leave is taken for the birth of the employee's child or to care for the child after birth, for placement of a child with the employee for adoption or foster care, or to care for the child after placement, to care for the employee's parent with a serious health condition, or to care for a Covered Service member with a serious injury or illness.

Computation of Leave

Leave will be granted during a "rolling" twelve (12) month period. Each time an employee takes FMLA leave, the remaining leave entitlement will be the balance of the twelve (12) weeks that has not been used during the immediately preceding twelve (12) months. Two examples are set forth below.

- If an employee has taken eight (8) weeks of FMLA leave during the past twelve (12) months, four (4) weeks of leave remain.

- If an employee used four (4) weeks of FMLA leave beginning February 1, four (4) weeks beginning June 1, and four (4) weeks beginning December 1, the employee would not be entitled to any FMLA leave until the following February 1 (assuming he or she was otherwise eligible) and then would only be entitled to four (4) weeks of leave.

Intermittent Leave

When medically necessary, an employee may take leave intermittently (a few days or a few hours at a time) for their own serious health condition, to care for an immediate family member with a serious health condition, to care for a Covered Service member with a serious injury or illness, or when necessary for “qualifying exigency” leave.

“Medically necessary” means that there must be a medical need for the leave and the leave can best be accomplished through an intermittent schedule. An employee taking intermittent leave, or leave on a reduced leave schedule, may be required to transfer temporarily to a position for which the employee is qualified, with equivalent pay and benefits that better accommodates recurring periods of leave.

When leave is needed to care for an immediate family member or the employee’s own illness, and is for planned medical treatment, the employee must attempt to schedule treatment so as to minimize disruption to the District’s operations. Employees should consult with the District prior to scheduling the treatment in order to arrange a schedule that best suits the needs of the employee and the District. In the case of intermittent leave, the employee is required to notify the District at least 30 days in advance (or, if not possible, as soon as practical) of each absence.

Specific rules apply to intermittent leave taken by “instructional employees.” An instructional employee is an employee whose principal function is to teach and instruct students in a class, a small group, or an individual setting (e.g., teachers, coaches, driving instructors, special education assistants, etc.). Teaching assistants and aides who do not have instruction as the principal function of their job are not considered an “instructional employee.” The following rules apply to intermittent leave for instructional employees:

- 1) FMLA leave that is taken at the end of the school year and resumes at the beginning of the next school year is not regarded as intermittent leave but rather continuous leave. The period in the interim (i.e., summer vacation) is not counted against an

employee and the employee must continue to receive any benefits that are customarily given over the summer break.

- 2) If the employee requesting intermittent leave or leave on a reduced schedule will be on that leave for more than 20% of the number of working days during the period for which the leave would extend, the following criteria may be required by the employer:
 - 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 for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.
- 3) There are also special requirements for instructional employees taking leave and the leave's relation to the end of the term.
 - a) If the instructional employee is taking leave more than five weeks prior to the end of the term, the District may require that the employee take the leave until the end of the term if the leave lasts more than three weeks and the employee was scheduled to return prior to three weeks before the end of the term.
 - b) If the instructional employee is taking leave less than five weeks prior to the end of the term for any of the previous FMLA-related reasons except qualifying exigency, the District may require that the employee remain out for the rest of the term if the leave lasts more than two weeks and the employee would return to work during that two-week period at the end of the instructional term.
 - c) If the instructional employee begins taking leave during the three weeks prior to the end of the term for any reason except qualifying exigency, the District may require that the employee continue leave until the end of the term if the leave is scheduled to last more than five working days.
 - d) Any additional time that is required by the District due to the timing of the end of the school year, will not be charged against the employee as FMLA leave because it was the District who requested that the leave extend until the end of the term.

Pay During Leave

FMLA leave is unpaid, except as follows:

- 1) Nothing in this policy prevents an employee from applying for Worker's Compensation or Disability Benefits. Leave which is covered by Workers' Compensation or Disability Benefits will be designated as FMLA leave.
- 2) Employees not receiving Workers' Compensation or Disability Benefits will be required to use their accrued sick leave during FMLA leave, and such leaves will run concurrently with the employee's FMLA leave.
- 3) Where sick days are used to receive pay during FMLA leave, those days will be counted as part of the 12 weeks of FMLA leave.

Employees are not permitted to engage in other employment while they are absent from the District under this policy, without prior approval from the District.

Maintenance of Health Benefits

The District will maintain group health insurance benefits for employees on FMLA leave on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period. Any share of group health plan premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. Arrangements will be made for employees to pay their share of the group health insurance premiums while on FMLA leave.

If an employee's premium payment is more than thirty (30) days late, his or her group health insurance benefits may be terminated and the employee will be extended continuing coverage opportunities in accordance with COBRA.

If the District pays the employee's share of any premium payments, the District reserves the right to recover the full value of those payments made in any manner permitted by law.

An employee on approved FMLA leave will be subject to any changes in the group health plan that occur while he or she is on FMLA leave (e.g., changes in coverage, premiums, deductibles).

For all periods when an employee is required to use paid leave (such as sick time) concurrently with FMLA leave, benefits that are accumulated on an accrual basis (e.g., personal or sick time) will continue to accrue. No accrual

of paid time off (sick or personal time) will occur during any unpaid portion of the leave.

If an employee gives unequivocal notice of his or her intent not to return to work, the District's obligation to continue group health insurance benefits will cease, subject to COBRA.

An employee on approved FMLA leave who fails to return to work at the end of his or her leave will be required to reimburse the District for all premium payments expended by the District on the employee's behalf during the period of unpaid FMLA leave, unless the reason the employee does not return to work is due to:

- 1) The continuation, recurrence, or onset of a serious health condition of the employee or the employee's spouse, son, daughter, or parent;
- 2) The serious injury or illness of a spouse, son, daughter, or parent, or next of kin, who is a Covered Service member; or
- 3) Other circumstances beyond the employee's control

Job Restoration

Upon return from FMLA leave, an employee will be restored to the position he or she held when the leave commenced or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment, unless the employee's employment was, or would have been, terminated for reasons unrelated to the leave (i.e., reorganization, lay off, etc.).

Under specified and limited circumstances, the District may refuse to reinstate certain highly paid "key" employees after using FMLA leave. This determination will be made in accordance with applicable law.

If an employee's need for FMLA ceases prior to the end of the requested leave, the employee is required to promptly return to work.

After exhausting the FMLA leave entitlement, an employee must return to work or, if applicable, request additional unpaid leave as an accommodation. An employee that fails to return to work after exhausting his or her FMLA leave, and fails to request additional leave, may be terminated in accordance with the law or any applicable collective negotiations agreement procedure. If additional leave is requested, but not granted, the employee must return to work, otherwise he or she may be terminated.

Notice and Medical Certification

Except where leave is unforeseeable, whenever possible and practicable, all employees requesting leave under this policy must submit their request in writing to the Human Resources Office thirty (30) days before the leave is to commence. If an employee fails to provide thirty (30) days' notice for foreseeable leave, the leave request may be denied until at least thirty (30) days from the date the employee provides notice.

Where the need for leave is not foreseeable, the employee must submit a written request as soon as is practicable (normally no later than the next business day after learning of the need for leave).

Employees seeking FMLA leave may be required to complete and submit medical certification forms to Human Resources Office before the leave is to commence. Failure to provide a completed medical certification form in a timely fashion may result in the delay of the start or denial of leave. An employee who has not provided the District with the required leave form and, where applicable, the medical certification form, must follow the call-in procedure for each day that he or she is absent from work. Failure to do so shall be considered a no-call/no-show.

The District may require an employee to provide periodic medical recertification of his or her condition or the condition of a family member that necessitated the leave, as well as certification of an employee's ability to return to work.

If it becomes necessary for an employee to take more leave than originally planned, the employee is obligated to give the District reasonable advance notice of the change in circumstances necessitating such additional leave.

While on leave, employees must periodically report to the District the status of their medical condition and their intent to return to work. If an employee gives unequivocal notice of intent not to return to work, the District's obligation to restore the employee to employment ceases.

If an absence of five (5) or more days is due to an FMLA-qualifying reason, the District reserves the right to designate that leave as FMLA leave, whether or not the employee requested such designation.

FMLA Notice

A notice which explains the FMLA's provisions and provides information concerning the procedures for filing complaints of violations of the FMLA will

be posted in each school building and a notice of an employee's FMLA rights and responsibilities will be either placed in the employee handbook of the employer or furnished to each new employee upon hire.

Miscellaneous

The FMLA prohibits: (a) interfering with, restraining, or denying an employee the exercise of any right provided under the FMLA, or (b) discriminating against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA. If a prohibited act has occurred, or the FMLA was not followed, a complaint may be filed with the United States Department of Labor or a private action instituted.

This policy is intended to implement the FMLA and its implementing regulations. To the extent this policy is inconsistent therewith, the FMLA and the regulations will govern. Further, to the extent any state or local law provides for additional leave benefits, the District will comply with any such requirements.

Policy References:

Family and Medical Leave Act of 1993 (as amended), Public Law 103-3

National Defense Authorization Act of 2008, Public Law 110-181

10 use 101(a) (13)

29 use 1630.1 and 2611-2654

29 CFR Part 825 and Part 1630

42 USC 12102

Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 45 CFR Parts 160 and 164

Policy Cross References:

[6552 - UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT \(USERRA\)/MILITARY LEAVES OF ABSENCE](#)

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