

Tantasqua Regional/Union 61 School Districts

FAMILY MEDICAL LEAVE ACT OF 1993 General Provisions and District Protocols

In accordance with the Family and Medical Leave Act, the School District will grant job-protected unpaid family and medical leave to eligible employees for up to 12 weeks or 60 days per 12-month period for any one or more of the following reasons:

- A. In order to care for a child following the child's birth, adoption, or placement in foster care with the employee;
 - 1. Leave must be taken within the 12-month period following the child's birth or placement with the employee;
 - 2. If married and spouses both work for the School District, their total leave in any 12-month period is limited to an aggregate of 12 weeks if the leave is taken for the birth or placement of a child.
- B. In order to care for an immediate family member (spouse, child, or parent) of the employee if such immediate family member has a serious health condition;
- C. The employee's own serious health condition that makes the employee unable to perform the functions of his/her position; or
- D. The employee qualifies for **Service Member Family Leave** (*Eligible employees who are the spouse, child, parent, or next of kin of a covered Service member are entitled to up to 14 weeks of additional leave during a single 12-Month Service member Period (for a total of 26 weeks if combined with other FMLA leave), to care for such covered service member who incurred a serious injury or illness in the line of active duty in the Armed Forces. No more than 26 weeks of leave may be taken in a single 12-Month Service member Period, and no additional extended leaves may be taken in other years for the same injury or illness. If married spouses both work for the School District, their total Service Family Leave may be limited to an aggregate of 26 weeks.*)

Definitions

- A. "12-Month Period" means a "rolling" 12-month period measured backward from the date leave is taken. Each time an employee applies for FMLA leave, the remaining leave entitled would be the balance of the 12 weeks which has not been used during the immediate preceding 12 months.
- B. "12-Month Service member Period" means a single 12-month period measured forward from the first day Service member Family Leave is taken.
- C. "Child" means a child either under 18 years of age, or older than 18 who is incapable of self-care

because of a disability, for whom the employee has actual day-to-day responsibility for care, including a biological, adopted, foster or step-child. For purposes of a son or daughter on covered active duty or call to covered active duty, or for Service member Family Leave, the child may be of any age.

- D. "Parent" means a biological parent of an employee or an individual who stood in place of a parent to an employee when the employee was a child.
- E. "Next of Kin" means the nearest blood relative of a Covered Service member.
- F. "Covered Active Duty" means: 1) in the case of a member of a regular component of the Armed Forces, duty during the deployment with the Armed Forces to a foreign country; and 2) in the case of a member of a reserve component of the Armed Forces, duty during the deployment with the Armed Forces to a foreign country where they may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.
- G. "Covered Service member" means: 1) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing recuperation for a serious injury or illness; or, 2) a veteran who is undergoing recuperation 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 preceding period of five years.
- H. "Veteran" means a person who served in the active military, naval, or air service, and who was discharged or released under conditions that were not dishonorable.
- I. "Serious Injury or Illness" means an injury or illness that was incurred by a member or veteran of the Armed Forces in the line of duty while on active duty (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty) and, in the case of a member, renders the member medically unfit to perform his or her duties, or in the case of a veteran, manifested itself before or after becoming a veteran.
- J. "Qualifying Exigency" includes: 1) notification of a call to covered active duty seven or fewer days from date of deployment; 2) military events and related activities, including post-deployment activities (e.g. official ceremonies, support programs, counseling, etc. related to covered active duty or a call to such); 3) attending to childcare and school activities; 4) attending to financial and legal matters; 5) to spend up to five days with a military member who is on short-term, temporary rest and recuperation leave during the period of deployment; and, 6) any additional activities related to the call to covered active duty otherwise agreed to by the employer and employee.
- K. "Serious Health Condition" means an illness, injury, impairment, or a physical or mental condition that involves 1) inpatient care (overnight stay); 2) incapacity requiring absence from work for more than three calendar days and that involves continuing treatment (two or more visits within 30 days) by a health care provider; 3) continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or which, if left untreated, would likely result in a period of incapacity of more than three calendar days; or 4) prenatal care by a health care provider.

Coverage and Eligibility

To be eligible for family/medical leave an employee must have worked for the School District for at least 12 months total and have worked at least 1250 hours over the previous 12-month period.

Special Rules Applicable to Employees of Schools The special rules affect the hours worked criteria and leave taken near the end of an academic term (semester), by instructional employees. Instructional employees are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

Intermittent or Reduced Leave

An employee may take leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule. The employee may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates recurring periods of leave. An employee may not take intermittent leave following the birth or placement of a child except at the discretion of the School District.

Use of Paid Leave

An employee will be required to use accrued paid leave (including paid vacation, sick leave, compensatory time and workers' compensation) for any part of a family/medical leave. When an employee has used all of his or her accrued paid leave, the employee may request an additional unpaid period of unpaid leave so that the total paid and unpaid leave provided equals 12 weeks (or 26 weeks if combined with Service member Family Leave time). An employee eligible for a sick bank may request through their building union representative for approval by the Superintendent.

Employee Notice Requirement

- A. An employee must give 30 days' notice in the event of a foreseeable leave. A **"Request for Family/Medical Leave"** form should be completed by the employee and returned to Human Resources for submittal to the Superintendent. In unexpected or unforeseeable situations, an employee should provide as much notice as is practicable, followed by the completed form. The notice must indicate that (1) the employee is unable to perform the functions of the job or that a covered family member is unable to participate in regular daily activities; (2) the anticipated duration of the absence; and (3) whether the employee intends to visit a health care provider or is receiving continuing treatment.
- B. If an employee fails to give 30 days' notice of foreseeable leave with no reasonable excuse, leave may be denied until 30 days after the employee provides notice.
- C. When planning medical treatment, an employee must make a reasonable effort to schedule the leave so as not to unduly disrupt the School District's operations.

- D. In the event of leave to attend to a qualifying exigency, the employee shall provide as much notice as is reasonable and practical under the circumstances.

Employer Notice Requirements

- A. Notice of Eligibility Rights: Within five days after the employee requests leave or after the School District learns the leave may be for an FMLA-qualifying reason, the School District will provide written notice stating whether the employee is eligible for FMLA leave, and if not eligible, at least one reason why.
- B. Notice of Designation of Leave: Within five days after the employee requests or the School District learns of the need for FMLA leave, the School District will provide a written notice stating whether leave is available, how much leave has been designated as FMLA leave, and how much leave remains.

Medical and Military Certification

- A. Certification of Serious Health Condition: For leaves taken because of the employee's or a covered family member are serious health condition, the employee, upon request, must submit a completed "**Physician or Practitioner Certification**" form and return the certification to the School District. Medical certification must be provided by the employee within 15 days after requested. If the employee fails to provide adequate certification within this time period, then the School District will inform the employee, in writing, what additional information is necessary and will allow the employee at least seven days to correct the certification. The School District may delay leave until such certification is produced. In the case of medical emergency, the employee must submit certification as soon as is reasonably possible.
- B. School District May Require Second Opinion: The School District may require a second or third opinion (at its own expense), periodic reports on status and intent to return to work, and a fitness-for-duty report to return to work.
- C. Certification Related to Covered Active Duty or Call to Covered Active Duty: The employee requesting leave related to a family member's covered active duty or call to covered active duty shall provide supporting documentation of such status issued by the applicable Armed Services branch.
- D. Certification for Extended Service member Family Leave: Employees requesting extended Service member Family Leave must provide documentation of the injury, recovery or need for care, such as an official Armed Forces communication, showing that the injury or illness was incurred on active duty and, in the case of a member, renders the member medically unfit to perform military duties, or in the case of a veteran that the veteran was a member of the Armed Forces within the preceding five years.
- E. Confidentiality of Medical Records: Documentation related to the employee's or family member's medical condition will be held in strict confidence and maintained in the employee's medical records file.

Effect on Benefits

- A. An employee granted a leave under this policy will continue to be covered under the School District's group health insurance plan with the same conditions as if the employee had been continuously employed during the leave period.
- B. Employee contributions will be required either through payroll deduction or by direct payment to the School District. The employee will be advised in writing at the beginning of the leave period as to the amount and method of payment. Employee contribution amounts are subject to any change in rates that occurs while the employee is on leave.
- C. If an employee's contribution is more than 30 days late, the School District may terminate the employee's insurance coverage.
- D. If the School District pays the employee contributions missed by the employee while on leave, the employee will be required to reimburse the School District (on a payroll deduction schedule) upon return from leave. The employee will be required to sign a written statement at the beginning of the leave period authorizing the payroll deduction for delinquent payments.
- E. If the employee fails to return from unpaid leave for reasons other than (1) the continuation of a serious health condition of the employee or a covered family member or (2) circumstances beyond the employee's control (certification required within 30 days of failure to return for either reason), the School District may seek reimbursement from the employee for the portion of the premiums paid by the School District on behalf of that employee (employer contribution) during the period of leave.
- F. An employee is not entitled to seniority or benefit accrual during periods of unpaid leave, but will not lose benefits already accrued prior to the start of the leave. Paid time off does accrue while on leave.

Job Protection

- A. If the employee returns to work within 12 weeks following a family/medical leave (or 26 weeks if combined with Service member Family Leave), he/she will be reinstated to his/her former position or an equivalent position in terms of pay, benefits, status, and authority.
- B. The employee's restoration rights are the same as they would have been had the employee not been on leave. If the position would have been eliminated or the employee would have been terminated but for the leave, the employee does not have the right to reinstatement upon return from leave.
- C. If the employee fails to return to work by the previously agreed upon date, in absence of further communication, he/she will be considered to have abandoned the job.

Unlawful Actions and Enforcement of FMLA Rights

It is unlawful for the School District to interfere with, restrain, or deny the exercise of FMLA rights, or to discharge or discriminate against anyone for opposing such unlawful practices or for participating in a proceeding relating to FMLA. An employee may file a complaint with the U.S. Department of Labor's Wage and Hour Division or may bring a private lawsuit against an employer for violating his/her rights under

the FMLA.