

FAMILY MEDICAL LEAVE OF ABSENCE ("FMLA")

**PURPOSE**

**Basic Leave Entitlement.** South Lyon Community Schools Family and Medical Leave Policy allows eligible employees to take up to 12 work weeks of unpaid leave per year for their own serious health condition, childbirth, or to provide care for the employee's newborn child, newly-adopted child, newly-placed foster child, or a child, parent or spouse with a serious health condition. Further, certain eligible employees may receive up to 12 work weeks of unpaid leave for military exigencies, and up to a total of 26 work weeks of unpaid leave to care for a covered military service member.

Additional information and forms relating to Family and Medical Leaves are available from the Administration.

**DEFINITIONS**

- A. **"Leave Year"**. The District has selected the following method for determining the "12-month period" for non-military related leave:

The 12-month rolling backwards period. The 12-month rolling period is calculated backwards from the date the requested leave commences. This method determines FMLA leave entitlement based upon how much FMLA leave an employee has taken the preceding 12 months, measured backwards from the date the leave is to commence.

For "Military Caregiver Leave," the leave period begins the first day the leave begins, regardless of past non-military leave taken and regardless of the leave period for other FMLA qualifying leave.

- B. **"Spouse"** means a husband or wife, but does not include unmarried domestic partners. If both spouses work for the school district, their total leave in any 12-month period may be limited to an aggregate of 12-weeks if the leave is taken for either the birth or placement for adoption or foster care of a child or to care for a sick parent. The aggregated amount of leave in a 12-month period is 26 weeks in situations where the leave is based on the care for a covered service member.
- C. **"Parent"** means biological, adoptive, step or foster parent, or any other individual who stood *in loco parentis* to the employee when the employee was a child. A parent-in-law does not meet this definition.
- D. **"Child"** means a son or daughter under age 18, or 18 years or older who is incapable of self-care due to mental or physical disability. Employees who are *in loco parentis* include those with day-to-day responsibility for care and

financially supports the "child". A biological or legal relationship is not necessary.

- E. "***Next of Kin of a Covered Service Member***" means the nearest blood relative *other* than a spouse, parent, son, or daughter, in the following order: blood relatives who have been granted legal custody of the covered service member by court decree or statutory provision, brother and sister, grandparent, aunt and uncle, and first cousin, unless the covered service member designated in writing another blood family member as his or her nearest blood relative for purposes of military caregiver leave.
- F. "*Service Member FMLA*" means eligible employees are provided with an unpaid leave for one, or for a combination, of the following reasons:
1. To care for a covered family member, including next of kin as provided in the statute, who has incurred an injury or illness or aggravation of a pre-existing illness or injury while in the line of duty while on covered active duty in the United States Armed Forces, including the National Guard and Reserves, provided that such injury or illness may render the family member medically unfit to perform duties of the member's office, grade, rank, or rating. Covered active duty means deployment with the Armed Forces to a foreign country. This leave is also available to care for veterans of the United States Armed Forces, including the National Guard and Reserves, provided the veteran was a service member at any time within the five (5) years prior to the start of the treatment, recuperation or therapy.
  2. A "qualifying exigency" arising out of a covered family member's (spouse, son, daughter, or parent) covered active duty or call to covered active duty in the United States Armed Forces including the National Guard and Reserves. Qualifying exigencies, as defined by Federal regulations, include: 1) short-notice deployment; 2) military events and related activities; 3) childcare and school activities; 4) financial and legal arrangements; 5) counseling; 6) rest and recuperation; 7) post-deployment activities; and 8) additional activities not encompassed in the other categories, but may be agreed to by the employer and employee. Covered active duty means deployment with the Armed Forces to a foreign country.

#### Duration of Service Member FMLA

When leave is due to a "Qualifying Exigency": An eligible employee may take up to twelve (12) work weeks of leave during any twelve (12) month period. Such leave shall be counted with regular FMLA leave time in calculating the twelve (12) weeks of allowable leave.

When leave is to care for an injured or ill service member: An eligible employee may take up to twenty-six (26) work weeks of leave during a single twelve (12) month period to care for the service member 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. This is a onetime benefit per service member. Leave to care for an injured or ill service member, when combined with other FMLA-qualifying leave, may not exceed twenty-six (26) weeks in a single twelve (12) month period.

Service Member FMLA runs concurrent with other leave entitlements provided under Federal, State, and local law.

G. "***Serious Health Condition***" means an illness, injury, impairment, or physical or mental condition that involves:

1. inpatient care (an overnight stay);
2. a period of incapacity from work requiring "continuing treatment" by a healthcare provider;

"**Continuing treatment**" by a healthcare provider must involve a period of incapacity of more than 3 full consecutive calendar days (including subsequent treatments or periods of incapacity relating to the same condition) that also involves either: (1) treatment of two or more times within 30 days of the first day of incapacity by a healthcare provider; or (2) treatment on at least one occasion by a healthcare provider which results in a "regimen of continuing treatment under the supervision of the a healthcare provider." (*e.g.*, a course of prescription drugs, physical therapy). The first (or only) in-person treatment visit to the healthcare provider must occur within 7 days of the first day of incapacity.

3. a period of incapacity from work due to pregnancy or for prenatal care;
4. a period of incapacity from work requiring treatment for chronic or permanent/long-term conditions (*e.g.*, asthma, diabetes, epilepsy, cancer); or
5. a period of absence to receive multiple treatments by a healthcare provider for a non-chronic condition that, if left untreated, could result in a period of incapacity of more than 3 consecutive calendar days (*e.g.*, dialysis for kidney disease or chemotherapy for cancer).

Unless complications arise, the common cold, flu, upset stomach, headache, routine dental problems and cosmetic treatments do not meet the definition of "serious health condition."

Please contact the Administration, if you have any questions regarding the definition of "serious health condition."

- H. "**Instructional Employee**" means a person whose principle function is to teach and instruct students in a class, a small group or an individual setting. This term includes teachers or auxiliary personnel principally engaged in direct delivery of instruction (*e.g.*, signers for hearing impaired). This definition does not include auxiliary personnel such as counselors, teacher assistants, aides, psychologists, social workers, and non-instructional support personnel.
- I. "**District**" means the South Lyon Community Schools. This policy has been adopted by the Board of Education and shall be implemented by the Superintendent or his/her designee.

**GENERAL**

- A. **Eligibility.** An employee who has worked at least 1,250 hours during the 12-month period before commencement of the leave is eligible for FMLA leave after having completed at least 12 months of service, including previous service with the District up to 7 years before commencement of the leave. Instructional employees will not be eligible if it is clearly demonstrated that the employee did not work the requisite hours during the 12-month period, unless otherwise provided by a collective bargaining agreement.
- B. Eligible employees may use FMLA leave for one or more of the following reasons:
  - 1. The birth of a child and care for a newborn;
  - 2. The care for a newly-adopted child or child recently placed in an employee's home for foster care;
  - 3. To care for a spouse, child (who is less than age 18, or 18 but incapable of self-care) or a parent (but not parent-in-law) who has a serious health condition;
  - 4. An employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job;  
or

5. To address certain qualifying exigencies or caregiving associated with a covered service member. The employee may be required to provide information supporting the need for military family leave.
- C. An eligible employee may take up to 12 weeks of unpaid leave during any 12-month period for a purpose which qualifies for a leave under the FMLA policy. As identified in Section 2.F.(1)., an eligible employee may take up to 26 weeks "Military Caregiver Leave" measured from the first day the military-related leave commences during a single 12-month period.

An eligible part-time employee is entitled to leave on a pro-rata basis.

If spouses are both employed by the District and both are eligible for FMLA leave, spouses may take up to a combined total of 12 weeks of leave for the birth and care of a newborn child, the placement of a child in the spouse's home for adoption or foster care, or the care of a seriously ill parent. This limitation does not apply to the care of a spouse or child with a serious health condition or to the employee's own serious health condition. For example, if spouses each take 4 weeks to care for a newborn child, each spouse will have eight weeks remaining within the 12-month period to use for other kinds of FMLA leaves, if necessary.

Family leave to care for a newborn child or for adoption or foster care placement of a child must be completed within 12 months of the birth, adoption, or placement of the child.

**NOTICE**

- A. ***Notice by Employee.*** The employee shall give notice for FMLA leave according to the following:
1. When the need for FMLA is *foreseeable* (i.e., for birth of a child, adoption, foster placement, or planned medical treatment for yourself or a family member or to care for a covered service member) 30-days notice is required. If the employee fails to give 30-days notice with no reasonable excuse, the District reserves the right to delay the employee's FMLA leave until at least 30-days after the leave request is made.
  2. When the need for FMLA leave is *unexpected*, absent unusual circumstances, the employee must provide notice to the Employer either the same business day or the next business day after the employee learns of the need for the FMLA leave.

With respect to both foreseeable and unexpected leave, employees must comply with District policies, work rules, collective bargaining provisions, and customary time off or call-in notice procedures.

At the time of requesting leave from work, the employee is required to complete District-approved forms for leave utilization. The District will provide a copy of this policy and District-approved forms which advises the employee of his/her FMLA rights and responsibilities. When any leave from work is requested, the District will inquire about the circumstances to determine if the requested leave appears to qualify as FMLA leave. Any leave request determined by the District to qualify as FMLA leave will be credited against the employee's FMLA leave for the 12-month period described in Section 2.A. of this policy.

- B. ***District Notification of FMLA Leave.*** Once the District receives sufficient notice that leave qualifies for FMLA leave, the District will (within 5 business days, absent extenuating circumstances) notify the employee, in writing, whether the employee is eligible for leave.

#### **SUBSTITUTION OF PAID LEAVE TIME**

Although FMLA leave is unpaid, there are several ways in which the District's policies or collective bargaining agreement (regarding salary continuation, sick days, and vacation pay) may operate in conjunction with certain kinds of FMLA leaves to provide the employee with some income during the leave. If paid leave is available, and applicable, it shall run concurrently with the FMLA leave, unless otherwise specified by a collective bargaining agreement or individual employment contract.

- ***Use of earned and/or accrued paid time off.*** When leave from work qualifies as FMLA leave is taken, an employee must first concurrently exhaust earned and/or accrued paid time off which will be credited against the FMLA leave, unless otherwise specified by a collective bargaining agreement or individual employment contract. For example, if an employee has earned and/or accrued paid vacation or personal leave, the District may require that the employee first concurrently apply that leave time to his/her FMLA leave until the earned or accrued paid leave time is exhausted. The District may also require that any earned or accrued paid vacation or personal/sick leave be exhausted concurrently with the FMLA leave before the unpaid portion of the FMLA leave to care for the employee's own serious health condition or that of a spouse, child or parent (where permitted for the latter purpose under the contract or policy governing the employee). Any remaining FMLA leave to which the employee is entitled will then be taken on an unpaid basis. An employee may also use applicable accumulated paid leave off during FMLA leave.

#### **MEDICAL CERTIFICATION**

- A. If an employee requests FMLA leave due to a serious health condition or to care for a parent, child, or spouse with a serious health condition, or to attend to specific matters concerning covered service member, the employee may be required to provide medical certification from a healthcare provider of the serious health condition involved and, if applicable, verification that the employee is needed to care for the ill family member and for how long.
- B. The employee may be required to provide supporting information concerning military family leave. Forms for this purpose will be provided by the Administration when the employee notifies the District of the need for the leave. Employees must provide the requested medical certification within 15 days of being supplied with the necessary certification form from the Administration or a request for FMLA leave may be delayed or denied.
- C. After an employee submits the required medical certification, the District may require, at its option and expense, that a medical certification be obtained from a healthcare provider of the District's own choosing to verify the need for the requested FMLA leave. If the first and second certifications differ, the District may require (at its option and expense) that a third certification be obtained from a third healthcare provider who is jointly selected by the prior two healthcare providers. The third medical certification will be final and binding on both parties. If the employee refuses to be examined by the third healthcare provider or refuses to cooperate in the examination, the employee will be bound by the second certification.
- D. The District may request medical recertification for leave taken because of an employee's own serious medical condition or the serious medical condition of a family member. Recertification may be requested pursuant to the following:
  - 1. The District may request recertification no more often than every 30 days and only in connection with the absence by the employee, unless paragraphs 1 or 2 apply.
  - 2. If the initial medical certification indicates that the minimum duration of the condition is more than 30 days, the District will wait until the minimum duration expires or 6 months, whichever is less, before requesting a recertification, unless paragraph 3 applies.
  - 3. The District may request recertification in less than 30 days if: (a) an employee requests an extension of leave; (b) circumstances described by the previous certification have changed significantly; or (c) the District receives information that cast doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

The employee must provide the requested recertification to the District within 15 calendar days unless it is not practicable under the particular circumstances to do so despite the employee's diligent good faith efforts. The District may ask for the same information as that permitted for the original certification. The employee has the same obligations to participate and cooperate in the recertification process as in the initial certification process. Any recertification requested by the employer shall be at the employee's expense unless the District provides otherwise (*e.g.*, District policy or collective bargaining agreement).

**INTERMITTENT/REDUCED LEAVE SCHEDULE**

- A. If an employee requests intermittent leave or a reduced leave schedule, the District may require the employee to explain why the intermittent/reduced leave schedule is necessary. An employee must meet with the District and attempt to work out a leave schedule which meets the employee's needs for leave without unduly disrupting the District's operations. The employee should meet with the District before treatment is scheduled. If the meeting takes place after treatment has been scheduled, the District may, in certain instances, require an employee to attempt to reschedule treatment.
- B. The District may assign an employee to an alternative position with equivalent pay and benefits, but not necessarily equivalent job duties, that better accommodate the employee's intermittent or reduced leave schedule. The District may also transfer the employee to a part-time job with the same rate of pay and benefits. A "light-duty" assignment, however, will not be considered FMLA leave. Where benefits (*e.g.*, vacation) are based on the number of hours worked, the employee will receive appropriate benefits, based upon hours worked. When a transfer to a part-time position has been made to accommodate an intermittent or reduced-leave schedule, the District will continue group health benefits on the same basis as provided for full-time employees until the 12 (or 26 weeks for the care of a covered service member) weeks of FMLA leave are used.
- C. An intermittent and/or reduced leave schedule is available for an eligible employee to attend to a serious health condition requiring periodic treatment by a healthcare provider, or because the employee (or family member) is incapacitated due to a chronic serious health condition. An employee on pregnancy leave (unless a serious health condition is involved) or leave for care of an adopted, foster, or newborn child is not eligible for intermittent leave.
- D. If an eligible instructional employee requests intermittent or a reduced leave schedule to care for a family member having a serious health condition, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the instructional employee would be on leave



for more than 20% of the total number of working days over the leave period, the District may require the instructional employee to choose either to:

1. take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
2. transfer temporarily to an available alternative position for which the instructional employee is qualified, which has equivalent pay and benefits and which better accommodates recurring leave periods than does the instructional employee's regular assignment.

**BENEFITS**

During the period of an approved FMLA leave, the District will continue the employee's health insurance premium uninterrupted. If the employee makes a contribution toward coverage, the employee must make arrangements to continue his or her contributions during the leave to continue the basic health insurance coverage at its existing level. An employee's failure to pay his or her share of health insurance premium during FMLA leave may result in loss of coverage if the employee's contribution is more than 30 days late. If the employee's premiums are in arrears, the District will provide the employee at least 15 days written notice that coverage will be dropped prior to cancelling coverage.

1. Except as required under COBRA, the District's obligation to maintain health benefit premium contributions for an employee on FMLA leave ceases when: a) the employment relationship would have terminated, irrespective of the FMLA leave (*e.g.*, reduction in force); b) when the employee advises the District of his or her intent not to return from leave; or c) when the FMLA leave expires and the employee has not returned from leave.
2. Employee contributions will be required either through payroll deduction or by direct payment to the District. The employee will be advised in writing at the beginning of the leave as to the amount and method of payment. Employee contribution amounts are subject to any change in premium rates that occur while the employee is on leave.
3. If the District remits any employee premium contributions in arrears from the employee while on FMLA leave, the employee will be required to reimburse the District for delinquent payments (through authorized payroll deduction or otherwise) upon return from leave. If the employee fails to return from unpaid leave for reasons other than: a) the continuation, recurrence, or onset of a serious health condition of the employee or a covered family member, or b) circumstances beyond the employee's control, the District may seek reimbursement from the employee for the portion of the premiums paid by the District on behalf of that employee (also known as the "employer contribution") during the leave period, excluding the period where the District or the employee has substituted paid leave for FMLA leave.
4. An employee is not entitled to seniority or benefits accrual (*e.g.*, holidays, vacations) during the unpaid leave, unless otherwise specified by the collective bargaining agreement or individual employment contract. An employee who takes FMLA leave will not lose any seniority or employment benefits that accrued before the date leave began.

B. Disability Plans and FMLA Leave:

1. **Workers' Compensation Leave.** If the employee has a work-related illness or injury that qualifies as a "serious health condition" under this policy, leave from the job for which the employee receives workers' compensation payments will be considered FMLA leave. The employer and employee may agree to have paid leave supplement worker's compensation benefits, *i.e.*, where worker's disability compensation benefits provide replacement income for only a portion of the employee's salary.
2. **Disability Plan Leave.** The District may designate any employer-sponsored disability plan leave as FMLA leave.

**RETURN TO WORK**

- A. Upon conclusion of FMLA leave, an employee will be returned to the same position the employee held when leave began or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment, provided the position remains.
- B. If an instructional employee (*i.e.*, a person whose principle function is to teach and instruct students in a class, a small group or an individual setting) begins FMLA leave more than 5 weeks before the end of a semester, the District may require that the leave be taken until the conclusion of the semester if the leave is to last at least 3 weeks and the instructional employee would return to work during the 3-week period before the conclusion of the semester.

If an instructional employee begins FMLA leave (other than for the instructional employee's own serious health condition) during the 5-week period before the end of a semester, the District may require that leave be taken until the end of the semester if the instructional employee would return to work during the 2-week period immediately before the end of the semester and if the leave period is to last more than 2 weeks.

If an instructional employee begins FMLA leave (other than for the instructional employee's own serious health condition) during the 3-week period before the end of a semester and the leave will last more than 5 working days, the District may require the instructional employee to take leave until the end of the semester.

- C. **Fitness-for-Duty Certification.** An employee shall submit a written statement from a physician which addresses the employee's ability to return to work and perform the essential functions of the position, consistent with District policy or collective bargaining agreement. In the case of intermittent or reduced schedule leave, where reasonable job safety concerns exist, the District may require the

employee to provide a fitness-for-duty certification up to once every 30 days before he or she may return to work.

**KEY EMPLOYEES**

- A. **Definition.** A "key" employee is an eligible salaried FMLA-eligible employee who is among the highest paid 10% of District employees.
- B. **Job Restoration.** While the District will not deny FMLA leave to an eligible key employee, the District may deny job restoration to a key employee when the restoration to employment will cause the District substantial and grievous economic injury or substantial, long-term economic injury.
- C. **Qualifications.** Each employee who is designated as a "key" employee will be notified of that fact when he/she requests FMLA leave, or at the commencement of such leave, whichever occurs first; or if the notice cannot be given then because of the need to determine whether the employee is a key employee, as soon thereafter as practical.

In any situation in which the District determines that it will deny restoration or employment to a key employee, the District will issue a hand-delivered or certified letter to the key employee explaining the finding that the required injury to the District exists. Additionally, the District will inform the key employee of the potential consequences with respect to reinstatement and maintenance of health benefits should employment restoration be denied. When practical, the District will communicate this determination before the commencement of the FMLA leave; the key employee may then take FMLA leave or forego it. If the FMLA leave has already begun, the key employee will be provided a reasonable time in which to return to work after being notified of the District's intention – the decision cannot be made until the employee seeks to return to deny reinstatement.

- D. **Timelines.** If a key employee does not return to work in response to the District's notification of its decision to deny restoration of employment, the District will continue to provide the key employee with health benefits (to the extent of the FMLA leave period) and the District will not seek to recover its cost of health benefit premiums. A key employee's FMLA rights will continue until the employee gives notice that he/she no longer wishes to return to work or until the District denies reinstatement at the end of the leave. The key employee has the right, at the end of the FMLA leave, to request reinstatement and the District will reevaluate the extent of its injury due to the requested reinstatement based on the facts at that time.

If the District again determines that the reinstatement will still cause the injury, the key employee will be notified in writing by hand-delivered or certified letter of the denial of his/her reinstatement to employment. If the District finds that

reinstatement will not result in the required injury, the key employee will be granted reinstatement.

**FAILURE TO RETURN FROM LEAVE**

An employee's failure to return to work upon expiration of FMLA leave will subject the employee to termination unless an extension is granted, as required by law or under a collective bargaining agreement. An employee who requests an extension of FMLA leave due to the continuation, recurrence, or onset of her or his own serious health condition, or of the serious health condition of the employee's spouse, child, or parent, must submit a written request for an extension to the employee's immediate supervisor. This written request should be made as soon as the employee realizes that she or he will not be able to return at the expiration of the leave period. Medical certification or recertification will be required to support any request for leave extension.

**EFFECT OF COLLECTIVE BARGAINING AGREEMENT(S)**

All provisions of this policy shall prevail except as modified by, or as may be inconsistent with, any applicable collective bargaining agreement between the District and any labor organization having exclusive representation rights in a defined bargaining unit of District employees. To the extent that this policy conflicts with the terms of such collective bargaining agreement(s), those agreement(s) shall prevail to the extent of such conflict or inconsistency where the contract provides greater rights to the employee than are otherwise secured through the FMLA.

**FORMS**

The following forms can be found on the Intranet or available at Administrative Services and, where applicable, must be filed with the Administration in accord with District policies and procedures:

- WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition
- WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition
- WH-381 Notice of Eligibility and Rights & Responsibilities
- WH-382 Designation Notice
- WH-384 Certification of Qualifying Exigency For Military Family Leave
- WH-385 Certification for Serious Injury or Illness of Covered Service Member For Military Family Leave
- Legal Authority: Family and Medical Leave Act of 1993, P.L. 103-3; National Defense Authorization Act for FY 2008, P.L. 110-118.