

Administrative Regulation - 4085A

Personnel-

Family and Medical Leaves – Certified/Non-certified

Family and Medical leave is regulated by the federal Family and Medical Leave Act of 1993, as amended (FMLA). The following administrative regulations and the corresponding Board policy will be interpreted to comply with that law, as well as the Connecticut Fair Employment Practices Act (CFEPA) with respect to pregnancy-related disability leave and transfer. Employees should be referred to the Director of Finance and Operations if they have any questions regarding how these regulations apply to their situation, when and how they may take leave, or any other question regarding FMLA leave.

The Basic Entitlement. An eligible employee is entitled to unpaid leave:

- Upon the birth of the employee's son or daughter, or to care for an employee's newborn child;
- For placement with the employee of a son or daughter for adoption or foster care;
- To care for the employee's spouse, son, daughter, or parent who has a serious health condition;
- Because of a serious health condition that makes the employee unable to perform his or her job;
- In connection with a "qualifying exigency" (such as making legal, financial and child care arrangements and taking care of other family obligations) involving the employee's spouse, son, daughter or parent who is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty).
- To care for a covered service member who (1) is the employee's spouse, child, parent or nearest blood relative and (2) is a member of the Armed Forces who is medically unfit to perform his duties and (3) has a serious illness or injury suffered in the line of active duty and (4) is undergoing medical treatment, recuperation or therapy or is on the temporary disability retirement list.

Eligibility Requirements. In order for an employee to be eligible for FMLA Leave, he or she must have been employed by the school District for no less than twelve months

and worked at least 1,250 hours in the twelve months just before the beginning of the leave.¹

Leave Time. Except in the case of leave to care for a covered servicemember, an eligible employee will be entitled to up to twelve (12) workweeks of unpaid leave during a 12-month period.

The period during which an employee may take FMLA Leave will be determined on a 12-month period measured forward from the date any employee's first FMLA leave begins.

Leave Time to Care for Covered Servicemember: An eligible employee who takes family leave to care for a covered servicemember (either a currently serving servicemember or qualifying veteran) shall be entitled to a combined total of twenty-six (26) workweeks of unpaid leave during a single 12-month period. The "single 12-month period" begins on the first day the employee takes such leave and ends 12 months after that date.

Husband and Wife both Eligible Employees:

If a husband and wife eligible for leave are both employed by the district, their combined leave for the birth of a child, to care for a child after birth or placement for adoption or foster care, and/or to care for a parent who has a serious health condition, cannot exceed twelve (12) weeks of leave.

If a husband and wife eligible for leave are employed by the district, their combined leave cannot exceed twenty-six (26) weeks of leave during a single 12-month period when leave is taken for the following reasons:

- To care for a covered servicemember, or;
- When a combination of leave is taken to care for a covered service member as well as for the birth of a child, to care for a child after birth or placement for adoption or foster care, and/or to care for a parent who has a serious health condition.

Serious Health Condition. A serious health condition is an illness, injury, impairment or physical or mental condition involving continuing treatment by a healthcare provider or any period of incapacity or treatment related to in-patient care (i.e., overnight stay) in a hospital, hospice or residential medical care facility. Continuing treatment entails:

- Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider; or

¹ A member of the National Guard or Reserve who is absent from employment for an extended period of time due to military service and is then reemployed by the District is entitled to FMLA leave if he or she would have been eligible for leave had he or she remained continuously employed.

- 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.

A serious health condition also exists during any:

- Period of incapacity due to pregnancy or prenatal care;
- Period of incapacity or treatment for such incapacity due to a chronic serious health condition, such as asthma or diabetes, which requires periodic visits to a health care provider and may involve occasional episodes of incapacity;
- Period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective, such as terminal cancer or Alzheimer's disease; or
- Period of absence to receive multiple treatments for restorative surgery or a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence

An employee who needs to know whether he or she has a health condition that would qualify him or her for FMLA Leave should contact the Human Resource Specialist.

Military Leave.

Qualifying Exigency: Eligible employees with a spouse, son, daughter, or parent who is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty) may use their 12-week leave entitlement to address certain “qualifying exigencies”.

A “qualifying exigency” may include issues arising from short notice deployment, attending certain military events, arranging for alternative childcare and attending school activities, addressing certain financial and legal arrangements, attending certain counseling sessions, engaging in rest and recuperation, parental care and attending post-deployment reintegration briefings as well as participating in additional activities arising out of the active duty or call to active duty. In order to secure leave for a qualifying exigency, employees must submit a completed DOL Form WH-384 along with a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the military member's covered active duty service. This information need only be provided once DOL Form WH-384 must be completed and returned within 15 calendar days of the date the District distributes the Form to the employee.

Care of a covered servicemember

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember (either a currently serving servicemember or covered veteran) during a single 12-month period. In order to care for a covered servicemember, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered servicemember.

“Covered Servicemember” means-

- (1) A current member of the Armed Forces² 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; or
- (2) A covered veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness. Covered veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

“Serious Injury or Illness” means-

- (1) In the case of a current member of the Armed Forces, an injury or illness that was incurred by the member in line of duty on active duty (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and
- (2) In the case of a covered veteran an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:
 - (i) 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 the servicemember unable to perform the duties of the servicemember’s office, grade, rank, or rating; or
 - (ii) a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs 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 military caregiver leave; or
 - (iii) 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

² Including a member of the National Guard or Reserves

(iv) 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.

In order to secure this extended leave, employees must submit a completed DOL Form WH-385 (current servicemember) or WH-385V (veteran). This Form must be completed and returned within 15 calendar days of the date the District distributes the Form to the employee.

Notice of Eligibility. When an employee requests FMLA leave, or when the school District learns that an employee's absence may be for an FMLA-qualifying reason, the District will notify the employee of FMLA eligibility within five business days, absent extenuating circumstances. Notification of eligibility does not mean that the District has determined that the leave qualifies as FMLA leave. Eligibility notification will include a notice of the employee's FMLA rights and responsibilities and inform the employee of any certification the District may require to support the leave request.

Notification will be achieved through the District's distribution of "Notice of Eligibility and Rights & Responsibilities," Department of Labor (DOL) Form WH-381, to the employee directly, or at his or her recorded home address.

Designation Notice. When the District has sufficient information to determine whether leave is being taken for a FMLA-qualifying reason, the District will notify the employee whether the leave will be designated as FMLA Leave. The employee will be informed of the District's determination through the distribution of the "Designation Notice," DOL Form WH-382, within five business days of the receipt of such information, absent extenuating circumstances. Sufficient information includes medical certification (such as DOL Form WH-380 for employee's serious health condition, DOL Form WH-380-F for family member's serious health condition, or DOL Form WH-385 for serious injury or illness of covered servicemember) or a certification for qualifying exigency (DOL Form WH-384).

If the District has sufficient information to designate the leave as FMLA Leave immediately after receiving notice of the employee's need for leave, the District may provide the employee with the Notice of Eligibility and Designation Notice at the same time.

If the District will require an employee to present a fitness-for-duty certification in order to return to work, the District will provide notice of such requirement with the Designation Notice. If such fitness-for-duty certification needs to address the employee's ability to perform the essential functions of his/her position, then the District will notify the employee in the Designation Notice and attach a list of the essential functions of the position.

Intermittent Leave/Reduced Hours. Leave taken intermittently or on a reduced work schedule is permitted under this policy for medical necessity (due to the serious health condition of the employee or covered family member or serious injury or illness of a

covered servicemember) and due to a qualifying exigency. Intermittent leave is not available when leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care.

Employees on intermittent leave must be allowed to take leave in as small a block of time as is provided for under the District's timekeeping practices. Any employee group that takes leave in increments greater than one hour will be permitted to use intermittent FMLA leave in one hour increments. For example, an employee who is normally eligible to take sick time in increments of half-days will be permitted to use intermittent FMLA leave in one hour blocks. By contrast an employee who is normally eligible to take sick time in fifteen minute increments will be allowed to take intermittent FMLA leave in fifteen minute increments as well.

Unless a collective bargaining agreement or state or federal law require otherwise, the District may require an employee to transfer to a temporary alternative job for which the employee is qualified and which better accommodates the intermittent or reduced hours leave. The temporary position will have rank, pay and benefits equivalent to the employee's regular job.

Instructional Employees: Special rules affecting intermittent leave, leave on reduced leave schedule, or leave near the end of an academic term apply to instructional employees. Instructional employees are those employees whose principal function is to teach and instruct students in a class, small group, or individual setting. The term includes not only teachers, but also athletic coaches, driving instructors, special education assistants and some teacher assistants and aides who are principally engaged in instruction.

Some instructional employees requesting intermittent leave or a reduced schedule leave may be required to choose between taking leave for the entire period of the intermittent leave and transferring temporarily to an alternative position for which the employee is qualified. This will occur in those situations where the leave is foreseeable based on planned medical treatment and the intermittent leave would involve the employee being absent for more than twenty percent (20%) of the working days during the period over which the leave extends. Instructional employees taking intermittent leave which constitutes *less* than twenty percent (20%) of the working days are not subject to transfer to an alternative position.

An instructional employee requesting leave near the end of an academic term may be required to remain on leave through the end of the term. Whether an instructional employee will be required to do so will depend on when the leave is requested and the number of weeks remaining in the term. Instructional employees requesting intermittent leave, reduced schedule leave, or leave near the end of an academic term and having questions regarding these restrictions should contact the Superintendent's Office.

Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not

counted against the employee's FMLA leave entitlement. An instructional employee who is on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

Paid Leave Substituted for (Runs Concurrently with) FMLA Leave. The federal FMLA regulations refer to "substituting" leave. This means the same thing as having two or more types of leave run concurrently. Earned-paid leave will be charged against the employee's FMLA Leave entitlement as set forth below:

- *Vacation* and *personal* leave will run concurrently when an employee cares for his or her child after the birth or placement for adoption or foster care; when an employee cares for his or her son, daughter or parent who has a serious health condition; when a qualifying exigency occurs arising out of the employee's spouse, child or parent's tour of active duty in support of a contingency operation; and/or when an employee cares for care for his or her spouse, child, parent or next of kin who is on, called or ordered to active duty in the Armed Forces but is medically unfit to perform the duties of the member's office, grade, rank or rating.
- *Vacation, personal* and *sick* leave will run concurrently when a serious health condition makes an employee unable to do his or her job except when an employee is receiving workers' compensation or disability insurance benefits for a serious health condition. If it is the District's policy, practice, or obligation pursuant to a collective bargaining agreement to supplement worker's compensation or disability plan benefits with available paid leave (such as the case where a plan only provides replacement income for two-thirds of an employee's salary), then such paid leave will run concurrently.
- *Workers' Compensation and State Disability Benefits* will run concurrently when a serious health condition makes an employee unable to perform his or her job.

In the event that no paid leave is available to an employee while he/she is on FMLA Leave, FMLA Leave will be unpaid. The District's policies, practices and collective bargaining agreements control whether an employee has accrued paid leave.

The employee will be notified that paid leave will run concurrently with, and counted against, FMLA leave in the Notice of Eligibility and Designation Notice.

Advance Notice. Except in the case of a qualifying exigency, a request for a FMLA Leave must be made at least thirty days before the date on which the leave will begin unless the need is not foreseeable. When planning or scheduling foreseeable medical treatment, the employee must consult with the District and make a reasonable effort to schedule the leave so as to meet the approval of his or her health care provider without unduly disrupting school operations. If the need for FMLA Leave is not foreseeable, the request must be made as early as practicable under the particular facts and circumstances. Failure to provide timely notice may delay the taking of foreseeable leave. The District

may decide to waive such notice requirement and designate the leave as FMLA Leave if it would otherwise qualify.

A request for FMLA Leave due to a qualifying exigency arising out of a spouse, child or parent's military deployment, order to covered active duty, or impending call to active duty that is foreseeable must be made as far in advance as is reasonable and practicable. The District requires copies of the military service member's active duty and foreign deployment orders for qualifying exigency leaves. DOL Form WH-384 may be used for this purpose.

Medical Certification. When an employee requests a leave based on a family member's or an employee's own serious health condition or to care for a covered servicemember, he or she will be required to support the request with written certification from the treating health care provider. The medical certification must explain the reason for the leave, the approximate date the condition commenced, the probable duration of the condition and the general nature of the treatment regimen. The employee should provide the health care provider with either a DOL Form WH-380-E, for an employee's own condition, or a DOL Form WH-380-F, for an immediate family member's condition, for this purpose.

When the leave is planned, the employee should provide the medical certification with the request, and if not with the request, before the leave begins. When the leave is not foreseeable, the employee must provide medical certification within 15 calendar days after the certification is requested, or as soon thereafter as reasonably possible. Delay in providing the certification could impact the start or continuation of leave, and failure to provide certification could result in the leave being treated as an unexcused absence. The District may require an employee to obtain a second or third opinion at the District's expense, depending on the particular circumstances of the individual case.

The employee has an obligation to provide the District with a complete and sufficient medical certification. If the certification is incomplete or insufficient the District will inform the employee of the deficiency and describe what information is needed to make the certification complete. The employee will be granted seven calendar days to cure a deficiency.

The District may contact the health care provider for the purposes of clarifying or authenticating a certification. This action will only be taken after the initial seven day cure period and will only be taken if the employee has provided the district with a Health Insurance Portability and Accountability Act ("HIPAA") release (FMLA Policy Addendum A). If a certification deficiency is not cured within the seven day time period, and the District is unable to correct the deficiency through direct, HIPAA-authorized, health care provider contact, the District may deny FMLA and any related absence may be counted as unexcused. The employee bears the ultimate responsibility for providing the District with timely and complete certification. Under no circumstances may the employee's direct supervisor contact the health care provider for purposes of clarification.

Other Medical Certification. While an employee is out on leave, the District may require additional reports regarding the employee's status and intent to return to work, which may include re-certification(s) from a health care provider.

Health Insurance. The District will continue health benefits during an employee's FMLA Leave as if the employee was continuously employed during the leave period. Employees making co-pay contributions to their health benefits must continue to do so, or coverage may be lost. If paid leave is substituted for FMLA Leave, any co-pay contributions will be paid by the method used prior to the leave (e.g., payroll deduction). If the FMLA Leave is unpaid, insurance payments must be paid in the manner the District designates. The District will notify the employee in writing of the terms and conditions by which these payments must be made. If an employee is able to return to work after the expiration of the leave but chooses not to, the employee will be required to reimburse the District for premiums the District paid to maintain his or her health coverage.

Other Benefits. During FMLA leave, the employee shall not accrue any additional benefits unless otherwise provided for by contract or school policy. Employment benefits accrued by the employee up to the day on which the FMLA leave of absence begins will be available upon return from leave.

With respect to pension and retirement plans, FMLA leave will be treated as continued service for purposes of vesting and eligibility to participate.

Return to Work. The District may require an employee on FMLA Leave to report periodically on the employee's status and intent to return to work. An employee who took leave because of his or her own serious health condition may be required to provide a fitness-for-duty certification (medical clearance) before returning to work. This will occur at the District's discretion, and factors considered will include, but not be limited to, the nature of the employee's health condition, the functions of the employee's position, the nature of the employee's initial medical certification(s) and evidence of abuse of leave entitlements.

An employee returning from FMLA Leave will be returned to the same position the employee held when the leave commenced or to an equivalent position with the same benefits, pay and similar terms and conditions of employment. Upon return from FMLA Leave, an employee will not be required to re-qualify for any benefits enjoyed before the leave. All benefits provided by the District prior to the leave shall resume in the same manner at the same levels subject only to changes that affect the entire workforce.

If the employee would not have been employed at the time he or she returned to work, then the District may deny reinstatement. For example, the District has no obligation to reinstate an employee who would have been laid-off during his or her FMLA leave period. An employee who is unable to return to work after exhausting his or her FMLA Leave entitlement or who would not otherwise have been employed will be separated from employment, unless the District has granted an extension to the leave.

Key Employees. Some higher-paid employees are considered “key employees”. Such employees will be advised at the beginning of their FMLA leave that they are a key employee and, on that basis, may be denied restoration to their position if restoration would cause substantial and grievous economic injury to the District.

Pregnancy-related Leave and Transfer. Under state law, an employee is entitled to a reasonable leave of absence for disability resulting from pregnancy. An employee taking such leave must provide a medical certification from a health care provider in the same manner he or she would for FMLA leave.

When an employee’s disability also qualifies as a serious health condition under this policy, the two types of leave will run at the same time. When this happens, the leave will be counted against the employee’s FMLA leave entitlement. While on pregnancy-related disability leave, an employee will be eligible to receive the same disability benefits as an employee on a medical leave of absence. In the event no paid days are available, the leave will be unpaid. Return to work FMLA entitlements apply.

If a pregnant employee reasonably believes that continued work in her current position could cause injury to herself or the fetus, she should give written notice to the Superintendent’s Office. Upon receipt of such notice, the District will make a reasonable effort to transfer the pregnant employee to a suitable temporary position. The District’s decision regarding the request for transfer may be appealed to the Connecticut Commission on Human Rights and Opportunities.

Employee Abuse of Policy.

Any employee who is found to have abused his or her leave entitlements under this policy may be subject to discipline, up to and including immediate discharge.

Posting and Record-Keeping.

Posting Requirements

- Notice explaining the Family and Medical Leave Act provisions and providing information concerning the procedures for filing complaints must be posted where employees can easily see it. (Department of Labor Form WHD Publication 1420 may be used)
- If a significant number of employees speak a language other than English, a second FMLA notice, written in a language that employees can understand should be posted as well.
- Notice explaining employee FMLA rights and responsibilities must be included in applicable employee handbooks.³ (The text of DOL Form WHD Publication 1420)

³ This does not include collective bargaining agreements.

- A copy of the notice explaining FMLA provisions will be given to each new employee upon hiring. (Department of Labor Form WHD Publication 1420 may be used)

Record-keeping Requirements

- Must keep records in conformance with wage and hour law.
- Records must be kept for no less than three years.
- Name, address and occupation of the employee; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.
- Dates FMLA leave is taken by employees must be recorded.
- If FMLA leave is taken in increments of less than one full day, the hours of the leave;
- Any written notice of FMLA leave given by the employee, and copies of all notices given to employees as required by law and by this policy;
- Any documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leaves;
- Payment of any employee benefits premiums; and
- Records of any dispute regarding designation of leave as FMLA leave, including any written statements from the employer and/or the employee concerning the reasons for the designation and for the disagreement.

Medical Records

Records and documents relating to medical certifications, re-certifications or medical histories of employees or employees' family members shall be maintained in the employees' separate medical files and treated as confidential medical records.

Forms

This administrative regulation references the following forms developed by the U.S. Department of Labor:

- "Employee Rights and Responsibilities Under the Family and Medical Leave Act," WHD Publication 1420
- "Notice of Eligibility and Rights & Responsibilities" DOL Form WH-381
- "Designation Notice" DOL Form WH-382
- "Certification of Health Care Provider for Employee's Serious Health Condition" DOL Form WH-380-E

- “Certification of Health Care Provider for Family Member’s Serious Health Condition” DOL Form WH-380-F
- “Certification of Qualifying Exigency For Military Family Leave” DOL Form WH-384
- “Certification for Serious Injury or Illness of a Current Servicemember for Military Family Leave” DOL Form WH-385
- “Certification for Serious Injury or Illness of Veteran for Military Caregiver Leave,” DOL Form WH385-V

The District reserves the right to substitute any of the forms listed above with replacements distributed by the Department of Labor or any other sufficient form created by the District.