

PERS4.2.1 - Leaves and Absences: Family and Medical Leave Act

P - Personnel

DECA

PROFESSIONAL / SUPPORT STAFF LEAVES OF ABSENCE WITHOUT PAY

(local)

YOUR RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993

The Family and Medical Leave Act of 1993 (FMLA) requires covered employers to provide up to twelve (12) weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for their employer for at least one (1) year, and for one thousand two hundred fifty (1,250) hours over the previous twelve (12) months, and if there are at least fifty (50) employees within seventy-five (75) miles. The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances.

Reasons for Taking Leave

Unpaid leave must be granted for any of the following reasons:

- A. To care for the employee's child after birth, or placement for adoption or foster care;
- B. To care for the employee's spouse, son or daughter, or parent who has a serious health condition; or
- C. For a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

Advance Notice and Medical Certification

The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- A. The employee ordinarily must provide thirty (30) days advance notice when the leave is "foreseeable."
- B. An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

Job Benefits and Protection:

- A. For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."
- B. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- C. The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- A. interfere with, restrain, or deny the exercise of any right provided under FMLA.
- B. discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement:

A. The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.

B. An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

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Family and Medical Leave Act (FMLA)

The District shall fully comply with the Family and Medical Leave Act and all interim and final regulations interpreting the FMLA issued by the U.S. Department of Labor. Accordingly, all portions of this policy that pertain to the FMLA shall be interpreted in a manner consistent with the FMLA and its regulations. Subject to the conditions set forth herein, any eligible employee of the District may take up to twelve (12) weeks of leave (FMLA leave) measured backward for each employee from the first time such employee uses leave under FMLA without pay, for any one (1) or more of the following reasons:

A. Because of the birth of a child of the employee and in order to care for such child.

B. Because of the placement of a child with the employee for adoption or foster care.

C. In order to care for the spouse or a son, daughter, or parent of the employee, if such person has a serious health condition.

D. Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

E. Because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.

An *eligible* employee is one who has been employed by the District at least twelve (12) months and who has completed at least one thousand two hundred fifty (1,250) hours of service immediately prior to the time the FMLA leave is to commence.

Serious health condition means an illness, injury, impairment, or physical condition that involves inpatient care in a hospital, hospice, or residential medical facility, or outpatient care with continuing medical treatment by a licensed physician. Any employee who has been employed by the District at least twelve (12) months and who has completed at least one thousand two hundred fifty (1,250) hours of service immediately prior to the time the leave is to commence shall be eligible for FMLA leave.

Special conditions applicable to FMLA. Entitlement to leave for the birth of a child or the placement of a child for adoption or foster care ends at the expiration of a twelve (12)-month period, beginning on the date of the event. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered military servicemember shall be entitled to a total of twenty-six (26) workweeks of leave during a twelve (12)-month period to care for the military servicemember. The leave described to care for a covered military servicemember shall only be available during one (1) single twelve (12)-month period.

A husband and wife working for the District may be limited to a total of twelve (12) weeks of leave during each applicable twelve (12)-month period for leave for the birth of a child or the placement of a child for adoption or foster care and to care for an employee's parent with a serious health condition. The aggregate number of workweeks of leave to which both the husband and wife may be entitled under covered military servicemember family leave combined with leave as described in the previous sentence shall be limited to twenty-six (26) workweeks during one (1) single twelve (12)-month period.

An employee shall substitute accrued vacation or discretionary leave for FMLA leave used by reason of a birth, adoption, or foster placement, to the extent available by policy, unless otherwise agreed to by the District. In any other circumstance, an employee's accrued vacation, discretionary, or other applicable leave shall be substituted for FMLA leave, to the extent available by policy, unless otherwise agreed to by the District.

Notice. An employee must provide at least thirty (30) days notice before the FMLA leave is to begin if the

need for the leave is foreseeable based on an expected birth, placement for adoption, or foster care, planned medical treatment for a serious health condition, or military service leave of the employee or family member. If thirty (30) days notice is not practicable, notice must be given as soon as practicable. The notice shall be in the form of a request for leave of absence as specified in this policy. The District may deny FMLA leave to any eligible employee until such time as the employee has provided the required notice.

Certification. All FMLA leave shall be supported by medical certification provided by the employee's health provider in the form of the exhibit accompanying this policy. In any instance where the FMLA leave must be preceded by thirty (30) days notice, the medical certificate should accompany the request for leave of absence. In any other instance, the medical certificate should be provided within fifteen (15) days after the FMLA leave commences.

Certification of active military duty or call to active duty in support of a contingency operation for purpose of receiving family leave shall be required under the same conditions as FMLA certification for leave indicated above.

The employee may be requested (at the District's expense) to provide recertification of medical conditions in support of leave if the District feels that the circumstances so warrant and notice is given. Recertification shall not be required for intervals shorter than thirty (30) days.

Whenever a medical certification or recertification is required of an employee, notice describing such requirement and providing the form of such certification shall be provided to the employee. An employee shall not be denied FMLA leave or other rights under the FMLA unless a notice required by FMLA in such situation has first been provided to the employee.

In the case of continuation, recurrence, or onset of a serious health condition to the employee, covered family of the employee (including a military servicemember being cared for by an employee) and the employee is unable to return to work, certification issued by the health care provider of the entity with the serious health condition shall be required to support the inability of the employee to return to work.

Intermittent or reduced time (IRT) leave. FMLA leave may be taken intermittently or on a reduced leave schedule under the following circumstances:

- A. If medically necessary to care for a family member or for the employee's own serious health condition;
- B. Because of any qualifying exigency the spouse, or a son, daughter, or parent, of the employee is on active duty, or notified of an impending call or order to active duty in support of a contingency operation; or
- C. If approved by the District.

The District may, for the term of the leave, transfer the employee to an alternative position with equivalent pay and benefits. If the IRT leave is for an instructional employee (one whose principal function is to instruct students in a class, small group, or as individuals), the District can require the employee either to take leave for a period or periods of a particular duration not greater than the duration of the planned treatment or to transfer temporarily to an available alternative position with equivalent pay and benefits that provides better accommodation of recurring periods of leave, provided the leave is:

- A. Requested to care for a qualifying family member or as a result of the employee's serious health condition preventing job performance;
- B. Foreseeable, based upon planned medical treatment; and
- C. For more than twenty percent (20%) of the working days in the leave period.

The employee may be granted leave under these circumstances, subject to reasonable efforts to schedule treatment so as not to unduly disrupt the educational program.

Special end-of-semester circumstances for instructional employees. Under each of the following conditions, leave for an instructional employee may be required to continue to the end of the academic semester:

Leave begins more than five (5) weeks before the end of the semester, leave is for at least three (3) weeks, and return to employment would occur during the last three (3) weeks of the semester.

Leave other than for the employee's serious health condition begins within the last five (5) weeks of the semester, leave is for greater than two (2) weeks duration, and return to employment would occur during the last two (2) weeks of the semester.

Leave other than for the employee's serious health condition begins within the last three (3) weeks of the semester and leave exceeds five (5) working days.

Employee notification. With each request for FMLA leave, the employee shall be notified:

- A. About FMLA by provision of the FMLA fact sheet (Exhibit EE).
- B. As appropriate concerning the expectations, obligations, and consequences of taking FMLA leave per 29 C.F.R. 825.301 of FMLA.
- C. That FMLA leave may be withheld until a requested notice is provided or the time frame is met.
- D. That if leave is granted to an employee who is unable to perform the work required, restoration may be denied until the employee has complied with the request to provide medical certification of ability to return to work.

The District will post notices in conspicuous places on the District premises that provide a summary of FMLA and information on how to file a charge for an FMLA violation.

Health care continuation. An employee taking FMLA leave shall be entitled to have the health care plan in which the employee is participating continue under the same terms and conditions applicable to actively working employees. The District shall require the repayment of any health care premiums paid by the District for continuing coverage during the period of the FMLA leave if the employee fails to return to work after the FMLA leave expires and the failure to return is not due to circumstances beyond the employee's control.

Position restoration. Upon return from FMLA leave, an employee shall be restored to the same position held before the FMLA leave commenced or to an equivalent position with equivalent pay, benefits, and working conditions. The District requires an employee to provide a medical certificate from a health care provider that the employee is able to resume work before returning from FMLA leave for a serious personal health condition. The District may delay the return of an instructional employee from FMLA leave at the end of a semester, in accordance with Section 825.602 of FMLA rules. The District may deny restoration of position to any key employee (i.e., one who is among the highest-paid ten percent [10%] of all employees of the District), in accordance with Section 825.218 of FMLA rules.

LEGAL REF.:

A.R.S.

[15-510](#)

Family and Medical Leave Act of 1993

29 C.F.R. Part 825