

## **FAMILY AND MEDICAL LEAVE**

The district will administer leave that qualifies for Family and Medical Leave Act (FMLA) protection in accordance with federal law. This policy is intended for guidance and shall not be interpreted to expand the district's responsibilities beyond the requirements of the law. The district will post information concerning employees' rights under the FMLA in accordance with law and will provide such information in any employee handbooks that are distributed. For employees who are not eligible for FMLA leave, including employees who have exhausted available FMLA-protected leave, requests for leave and the use of benefits time shall proceed according to the district's established policies.

### **Definitions**

The following definitions apply to FMLA leave:

*Active Duty* - Call to, order to, or retention of duty of members of the uniformed services under federal law during a war or national emergency.

*Armed Forces* - Army, Navy, Air Force, Marine Corps, Coast Guard.

*Child* - A biological, adopted or foster child; a stepchild; a legal ward; or a child of a person acting as a parent if the child is under 18 or 18 or over but incapable of self-care due to mental or physical disability. For military FMLA leave only, "child" is not limited to individuals who are under 18 or over 18 but incapable of self-care due to mental or physical disability.

*Covered Service member* - A member of the armed forces, National Guard or Reserves who is undergoing medical treatment, recuperation, therapy, is otherwise in outpatient status, or is otherwise on the temporary disability list for a serious injury or illness.

*Next of Kin* - For the purposes of service member family leave, the nearest blood relative other than a spouse, parent, son or daughter, in order of priority as established by federal regulation.

*Outpatient Status* - Covered service member assigned to a military medical treatment facility or a unit established for the purpose of providing command and control of members of the armed forces as outpatients.

*Parent* - The biological, adoptive, step or foster parent of an employee or an individual who acted as a parent to an employee when the employee was a child under 18 or 18 or over but incapable of self-care due to mental or physical disability. For the purpose of service member family leave, a parent is eligible for leave even if the child is over 18 years of age.

*Qualifying Exigency* - As defined by 29 C.F.R. ' 825.126.

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*Serious Health Condition* - Illness, injury, impairment or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical facility or continuing treatment by a health care provider.

*Serious Illness or Injury* - In the case of a member of the armed forces, including a member of the National Guard or Reserves, an injury or illness incurred in the line of duty on active duty in the armed forces that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.

*Spouse* - Husband or wife.

*Uniformed Services* - The armed forces, the Commissioned Corps of the National Oceanic and Atmospheric Administration and the Commissioned Corps of the Public Health Service.

### **Eligibility**

To be eligible for FMLA leave benefits, the employee must:

1. Have been employed in the district for at least 12 months (but not necessarily consecutively).
2. Have been employed for at least 1,250 hours of service during the 12-month period immediately preceding the leave (full-time teachers are deemed to meet this requirement).
3. Be employed at a worksite where 50 or more employees are employed by the district within 75 miles of that worksite.
4. Provide the district at least a 30-day notice of an expected absence for foreseeable circumstances, if practical.

An absence may qualify for FMLA protection if it is for one (1) of the following reasons:

1. Birth and first-year care of the employee's child.
2. Adoption or foster placement of a child with the employee.
3. Serious health condition of the employee or the employee's spouse, child or parent.
4. Care of a spouse, child, parent or next of kin who is a covered service member (service member family leave).

5. A qualifying exigency arising out of the fact that the spouse, child 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.

### Leave Use

For all FMLA purposes, the district adopts a rolling 12-month leave year period so that from the current day and the preceding time that equals a 12 month time period, the amount of FMLA Leave does not exceed the legal amount available.

1. All eligible employees are entitled to leave for a period not to exceed 12 workweeks per leave year for:
  - < The birth and first-year care of the employee's child.
  - < The adoption or foster placement of a child with the employee.
  - < A serious health condition of the employee or the employee's spouse, child or parent.
  - < A qualifying exigency arising out of the fact that the spouse, child 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.
2. All eligible employees are entitled to service member family leave for a period not to exceed 26 workweeks of leave per leave year for the care of a spouse, child, parent or next of kin who is a covered service member. This leave is only available during a single leave year.
3. Regardless of the reason leave is taken; no employee shall be entitled to a combined total of more than 26 workweeks of FMLA leave during the leave year.
4. When a husband and wife entitled to FMLA leave are both employed by the district and both wish to use FMLA leave for the same qualifying event, both employees will be limited to an aggregate total of 12 workweeks during a 12-month period in cases where the leave is taken for the birth or first-year care of the employees' child, adoption or foster placement of a child with the employees, or to care for a parent with a serious health condition. Likewise, when a husband and wife are both employed by the district and both wish to use service member family leave or a combination of service member family leave and leave for the birth or first-year care of their child, adoption or foster placement of a child with the employees, or to care for a parent with a serious health condition, both employees will be limited to an aggregate total of 26 workweeks of leave.

5. When an employee has an absence (taken as paid or unpaid leave) that meets the criteria to be an FMLA-qualified absence, the district will designate such absence as part of the employee's total annual FMLA entitlement. If an employee is on a Workers' Compensation absence due to an injury or illness that would also qualify as a serious health condition under the FMLA, the same absence will also be designated as an FMLA-qualifying absence and charged against the employee's FMLA-protected time entitlement.
6. The district shall apply appropriate paid leave, including sick leave, personal leave and vacation time, to an FMLA absence to the extent allowed by law and policy, giving proper notice to the employee. If an employee's accrued paid leave is exhausted, but an FMLA-qualifying reason for absence persists or a new FMLA-qualifying reason for absence occurs, the resulting absences will continue to be protected FMLA leave until allowable FMLA leave has been used, but such absences will be unpaid.
7. FMLA leave may be taken intermittently as required for the health of the employee or family member or as reduced-schedule leave in hourly increments. Instructional employees may take intermittent leave only when the employee and the district have reached an agreement for how the leave will be used.
8. The district reserves the right to require certification of any FMLA-qualifying event or condition of the employee or employee's spouse, child, parent or next of kin. Employees on FMLA-designated leave must periodically report on their status and intent to return to work. The district may also require that an employee present a certification of fitness to return to work.

### **Instructional Employees**

If intermittent leave or reduced-schedule leave equals more than 20 percent of instructional time, the district may require instructional employees who take such leave due to medical reasons to take block leave or to find an alternative placement for the period of planned medical treatment. When an instructional employee on FMLA leave is scheduled to return close to the end of a school term, the district may elect to use a special rule to prolong the employee's leave until the beginning of the next school term, thus extending the leave beyond the period where an FMLA-qualifying reason exists. In such an instance, the prolonged leave time is unpaid and is not charged against the employee's annual FMLA entitlement. In cases where the special rules for instructional employees apply, the superintendent may apply those special rules or the general FMLA rules as best serves the interest of the district.

## Leave Protections

The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of the employee's leave. Eligible employees who are absent for an FMLA-qualifying reason generally may return to the same position or an equivalent position with equivalent pay, benefits and working conditions at the conclusion of the leave, in accordance with law. Eligible employees are entitled to continued participation in the district's health plan as long as they are entitled to FMLA leave protection; however, an employee who fails to return to work after the expiration of his or her allowed leave time will be expected to reimburse the district for those benefits paid, as required by law.

The FMLA makes it unlawful for any employer to interfere with, restrain or deny the exercise of any right provided under the FMLA. Additionally, it is unlawful for any employer to discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA.

## Enforcement

The U.S. Department of Labor is authorized to investigate and resolve complaints of violation of the FMLA. An eligible employee may bring a civil action against an employer for violations. The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state law or local policy that provides greater family or medical leave rights. For additional information, contact the nearest office of the U.S. Department of Labor's Wage and Hour Division.

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***Note: The reader is encouraged to check the index located at the beginning of this section for other pertinent policies and to review administrative procedures and/or forms for related information.***

Adopted: June 28,, 2010

Revised:

Cross Refs: DLB, Salary Deductions

Legal Refs: Family and Medical Leave Act of 1993, 29 U.S.C. ' ' 2611-2619  
10 U.S.C. ' 101 (a) (13)  
29 C.F.R. ' ' 825.100 - 825.800

Bowling Green R-I School District, Bowling Green, Missouri

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