

## **P3707 FAMILY AND MEDICAL LEAVE**

### **BOARD POLICY:**

**Unless otherwise required by law or the administrative procedures implementing this policy, eligible employees will be granted family and medical leave with or without pay, as identified by employee agreements and this policy, for a period not to exceed twelve (12) workweeks during a twelve (12) month period. The procedures followed shall be governed by the terms of the Family and Medical Leave Act of 1993 and amendments, hereinafter referred to as the “FMLA.” Outside employment while on paid or unpaid FMLA leave for an employee’s own serious health condition is prohibited.**

Administrative Implemental Procedures:

1. Family and Medical Leave may be taken:
  - a. for the birth of the employee’s child or to care for the employee’s newborn child; or
  - b. for the placement of a child with the employee for adoption or foster care or to care for the newly placed child; or
  - c. to care for the employee’s spouse, child or parent with a serious health condition; or
  - d. for the employee’s own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee’s job (may include workers’ compensation claims); or
  - e. any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on active duty (or has been notified of an impending call or order to achieve active duty) in support of a contingency operation; or
  - f. the need to care for a covered service member with a serious injury or illness if the employee is the spouse, child, parent, or next of kin of the service member.
2. Employees are eligible if they have worked for USD 259 for at least twelve (12) months (currently or with previous employment) and for at least 1,250 hours over the twelve (12) months immediately preceding the commencement of the leave.
3. If both spouses are employed by the district, they are together entitled to a combined total of 12 workweeks of FMLA leave during a 12 month period for the birth, adoption or foster care placement of a child with the employees, for aftercare of the newborn or newly placed child, and to care for a parent with a serious health condition. For example, if each spouse took 6 weeks of leave to care for a newborn child, each could later use an additional 6 weeks due to his/her own serious health condition or to care for a child with a serious health condition. Each spouse may be entitled to additional FMLA leave for other qualifying reasons, i.e., the difference between the leave taken individually for any of the above reasons and 12 workweeks, but not more than a total of 12 workweeks per person (eligible employees who require leave to care for a covered service member with a serious health condition may use up to 26 weeks of combined leave).
4. The 12-month “Leave Year” period is a rolling period measured backward from the date an employee’s leave is used.
5. Leave taken to care for a newborn or newly adopted child must conclude within twelve (12) months after the birth or placement of the child. Such leave may not be taken on an intermittent or reduced work schedule basis.

6. Child is defined as a biological, adopted, or foster child, a stepchild, or a legal ward who is either under 18 years of age or age 18 or older and incapable of self-care due to a mental or physical disability.
7. A serious health condition is any injury, illness, impairment, or physical or mental health condition that involves inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a health care provider.
8. If a FMLA-eligible employee is also eligible for Temporary Leave for personal or family illness, the employee must exhaust his or her Temporary Leave eligibility beginning with the commencement of, and concurrent with, FMLA leave, subject to the terms of any negotiated agreement with a recognized bargaining unit or policy applicable to the employee. The only exception to this rule is in cases in which an employee is FMLA eligible because of a serious health condition associated with an on-the-job injury and is receiving workers' compensation benefits. FMLA leave taken after Temporary Leave eligibility is exhausted is unpaid but protected. The substitution of paid leave for unpaid leave does not extend the 12-workweek (or, in the case of employees on leave to care for a covered service member, 26-workweek) leave period.
9. Health benefits provided under any group health plan will be continued for the duration of FMLA. Unless the employee fails to return from leave, due to the employee's continuing serious health condition or other circumstances beyond the employee's control, an employee who fails to return to work must reimburse USD 259 for all health premiums paid during any unpaid portion of the leave.
10. If an employee's need for FMLA leave is foreseeable, a 30-day advance written notice, or such shorter notice as is practicable (i.e., within one or two business days of learning of the need for the leave), must be provided. Requests for leave shall be forwarded to the employee's immediate supervisor who will acknowledge the request and forward it to Employee Benefits and Health Management for review of eligibility.
11. If an unforeseeable event occurs, the employee is required to provide notice of the need for leave within one or two business days of learning of the need for the leave. The request may be made verbally, with a follow-up request in writing indicating the beginning date and anticipated return to work date. Failure to follow departmental absence reporting procedures may result in disciplinary action.
12. Request for intermittent for medical treatment shall be subject to the same notice requirements set forth above. If an employee takes leave intermittently, the employee must, when requested, attempt to schedule the leave so as not to unduly disrupt the district's operations.
13. In the event of intermittent leave for foreseeable planned medical treatment, the district reserves the right to place an employee in an alternative position, which would accommodate intermittent absences. Said alternative position will have equivalent pay and benefits as provided for the employee's regular job.
14. Upon returning from FMLA leave, the employee is entitled to return to the same position he/she previously held or to an equivalent position with equivalent employment benefits and other terms and conditions of employment. However, an employee is entitled to reinstatement only if he/she would have continued to be employed had FMLA leave not been taken. Thus,

an employee would not be entitled to reinstatement if, because of a layoff, reduction in force or other reason, the employee would not be employed at the time job restoration is sought.

15. If an employee fails to return to work following the conclusion of FMLA leave and fails to request an extended leave pursuant to Board policy (if applicable), the employee will be considered to have voluntarily resigned. This provision shall not apply to employees on FMLA leave for their own serious health condition who are eligible for additional time off pursuant to the employee agreements.
16. Any employee who works primarily in an instructional capacity and requests a period of leave near the conclusion of the academic term may be required to continue the leave until the end of the academic term.
17. FMLA 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 of time during summer vacation when the employee would not have been required to report for duty shall not be counted against the employee's FMLA leave entitlement.
18. Employees will be informed through their immediate supervisor or Employee Benefits and Health Management as to the action taken on a leave request. The district may provisionally designate the employee's leave as FMLA leave if the district has not received medical certification or has not otherwise been able to confirm that the employee's leave qualifies as FMLA leave. If the employee has not notified the district of the reason for the leave and the employee desires that the leave be counted as FMLA leave, the employee must notify the district within two (2) business days of the employee's return to work that the leave was for an FMLA reason.
19. Medical certification from a health care provider supporting the request for FMLA leave for the care of an employee's own, or a family member's, serious health condition is required. The serious medical condition must meet the guidelines set forth by the FMLA. Medical documentation from a health care provider must be received within fifteen (15) calendar days from the beginning date of the FMLA leave request. The district may require that the treating physician provide continued verification of the need for FMLA leave at appropriate intervals consistent with FMLA regulations or continued FMLA leave may be denied. If the employee fails to provide a medical certification within a reasonable time, the district may delay the employee's continuation of FMLA leave. Furthermore, if the employee never produces the medical certification, then the leave will not be designated as FMLA leave.
20. Any employee who takes FMLA leave for his or her own serious health condition will be required to submit a return to work clearance certification from the employee's treating physician stating that the employee is able to return to work. The district shall have the right to delay restoration of employment until the employee provides the required return to work clearance certification. If the employee fails to provide either a return to work clearance certification or a new medical certification for a serious health condition at the time that the FMLA leave is concluded, then the employee may be terminated. Such certification shall not be required for employees returning from intermittent leave.
21. Military Leave (up to 12 work weeks) and Military Caregiver Leave (up to 26 work weeks) will be administered in accordance with the amendments of the Family and Medical Leave Act.

22. Posters giving a summary of the rights of the employees under the FMLA must be posted in “conspicuous places” in all work sites. All sites are responsible for securing and posting such posters.

Administrative Responsibility: Human Resources – Employee Benefits & Insurance  
Management

Latest Revision Date: March 2019

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