

Personnel -- Certified/Non-Certified

Maternity/Adoptive/Child Care Leave

The Board of Education recognizes that the disabilities of its employees caused or contributed to by pregnancy, miscarriage, at abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities.

The Board of Education extends the benefits of its sick leave program to include such periods of pregnancy-related temporary disabilities.

It should be recognized that the sick leave benefit is not extended to include periods of childrearing, but is limited only to those periods of temporary disability caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom.

(cf. 4152.6 – Family and Medical Leave of Absence)

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Personal Leaves

Family and Medical Leave Act

Family and Medical leaves are provided by the Board as required by the federal Medical Leave Act of 1993, as amended (FMLA). This policy and the corresponding regulations 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 contact the Superintendent's Office if they have any questions regarding how the Board's FMLA policy and regulations apply to their situation, when and how they may take leave, or any other question regarding how the Board's FMLA policy and regulations apply to their situation, when and how they may take leave, or any other question regarding family, medical or pregnancy-related disability.

Legal Reference: 29 U.S.C. §2601 et. seq. (Family and Medical Leave Act of 1993)
 38 U.S.C. §§4301-4333 (Uniformed Services Employment and
 Reemployment Rights Act of 1994 (USERRA))
 29 C.F.R. §825 et. seq. (Family and Medical Leave Act Regulations)
 C.G.S. §§46a-51(17) and 46a-60(a)(7) (Pregnancy Discrimination)
 P.L. 110-181, §585(a) (National Defense Authorization Act for Fiscal Year
 2008)

Policy adopted: June 26, 2006
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EAST HAMPTON PUBLIC SCHOOLS
East Hampton, Connecticut

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Personal Leaves

Family and Medical Leave Act

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The Basic Entitlement

An eligible employee is entitled to unpaid leave:

- To care for his or her child after birth or placement for adoption or foster care;
- To care for his or her child, spouse¹, or parent who has a serious health condition;
- When a serious health condition makes the employee unable to do his or her job;
- Due to any "qualifying exigency" arising out of the fact that the spouse, child or parent is on active duty (or has been notified of an impending call to order to active duty) in the Armed Forces in support of a contingency operation; or
- To care for his or her spouse, child, parent or next of kin who is on active duty in the Armed Forces but is medically unfit to perform the duties of the member's office, grade, rank or rating.

¹For purposes of this policy, the term spouse also includes a civil union partner as defined by Connecticut state law.

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Personal Leaves

Family and Medical Leave Act (continued)

(FMLA Leave). When FMLA Leave applies, an employee will be entitled to up to twelve (12) workweeks of unpaid leave during a 12-month period. An eligible employee who takes family leave to care for a covered military service member shall be entitled to a combined total of twenty-six (26) workweeks of unpaid leave during a single 12-month period. The period during which an employee may take FMLA Leave will be determined on a rolling basis, measured backwards from the date upon which an employee uses any leave. For instance, an employee requiring FMLA Leave in April will be entitled to up to twelve or twenty-six workweeks of leave less any leave taken since April of the prior year.

If the District employs both spouses, their combined leave cannot exceed twelve workweeks during any 12-month period when the leave is taken 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. If the District employs both spouses, their combined leave cannot exceed twenty-six workweeks during a single 12-month period when leave is taken to care for a covered military service member or when a combination of leave is taken to care for a covered military 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. If the spouses' leave includes leave taken 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, the twelve workweek limitation shall apply to this leave.

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.²

²A 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.

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Personal Leaves

Family and Medical Leave Act (continued)

Serious Health Condition. A serious health condition is an illness, injury, impairment or physical or mental condition involving continuing treatment by a health care 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:

- A period of incapacity requiring absence from work, school or other regular daily activities of more than three consecutive calendar days and subsequent treatment or period of incapacity relating to the same condition that also includes continuing treatment by a health care provider;
- Any period of incapacity due to pregnancy or prenatal care, or treatment for 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; or
- 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.

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, who can provide forms to take to the employee's health care provider for this purpose.

Intermittent Leave/Reduced Hours. Leave taken intermittently or on a reduced work schedule is permitted under this policy for medical reasons only, including for the care of a covered servicemember. In these cases, the employee's leave will be charged against the employee's FMLA entitlement in units of one hour. That is, an employee who takes two and one-half hours of leave as intermittent FMLA Leave will be charged three hours of FMLA Leave. This provision will have no effect on any collective bargaining agreement provisions that may provide differently for the crediting of other leave.

Unless a collective bargaining agreement provides otherwise, if the District determines that the intermittent leave would be disruptive to school operations, the District may require the 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.

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Personal Leaves

Family and Medical Leave Act (continued)

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, which includes not only teachers, but also coaches, special instructors and some assistants and aides.

Some instructional employees requesting intermittent leave or a reduced scheduled leave may be required to choose between taking leave for the entire period of the intermittent leave or 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 (20%) percent of the working days during the period over which the leave extends.

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.

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 state disability insurance benefits for a serious health condition.
- Workers' Compensation and State Disability Benefits will run concurrently when a serious health condition makes an employee unable to perform his or her job.

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Personal Leaves

Family and Medical Leave Act (continued)

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. Under most circumstances, this notice will be provided within two business days of the District learning that the leave is being taken for an FMLA required reason.

Advance Notice. A request for FMLA Leave due to a qualifying exigency arising out of a spouse, child or parent's tour of or impending call or order to active duty that is foreseeable must be made as is reasonable and practicable. A request for all other 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 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 possible, normally no more than one to two working days after learning when leave must be taken. 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.

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 must support the request with a written certification from a health care provider. The medical certification must explain the reason for the leave and the date(s), length and nature of leave anticipated.

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.

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.

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Personal Leaves

Family and Medical Leave Act (continued)

Health Insurance. The District will normally continue health benefits during an employee's FMLA Leave. 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. 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 his or her same job position or to an equivalent position. If the employee would not have been employed at the time he or she returned to work, then the District may not reinstate him or her. For example, the District has no obligation to reinstate an employee who would have been laid off during his or her FMLA Leave.

Some higher-paid employees are considered "key employees." Such an employee will be advised at the beginning of his or her FMLA leave that he or she is a key employee and, on that basis, may be denied restoration to the employee's position if the restoration will cause substantial and grievous economic injury to the District.

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.

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Personal Leaves

Family and Medical Leave Act (continued)

Pregnancy-related Leave and Transfer. Employees are entitled to leaves of absence for disability resulting from pregnancy, which may occur both before and after the birth of the child. An employee taking such leave must provide a medical certification from a health care provider in the same manner 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.

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