

# EMPLOYMENT PREFERENCES AND RESTRICTIONS FAMILY MEDICAL LEAVE

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This policy is adopted in conformance with the Family and Medical Leave Act, 29 U.S.C. §2601 et seq. and implementing regulations located at 29 C.F.R., § 825 et seq. and supersedes all other District policies related to family leave, sick leave, bereavement leave, pregnancy leave and/or disability leave.

## 1. DEFINITIONS

### A. Eligible Employee

1. An “eligible employee” means any classified or certified employee of the District who has been employed for at least 12 months by the District and worked at least 1,250 hours during the immediate 12-month period prior to any request for leave under this Policy.

*29 CFR 825.110*

### B. Instructional Employee

1. An “instructional employee” is one whose principal function is to teach and instruct students in a class, small group, or individual setting and includes not only teachers but also coaches, driving instructors, and special education assistants such as signers for the hearing impaired.
2. “Instructional employee” does not include teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel (such as counselors, psychologists, or curriculum specialists) or non-teaching employees (such as cafeteria workers, maintenance workers, or bus drivers).

*29 CFR § 825.600(c)*

### C. Employment Benefits

1. The term “employment benefits” means all benefits provided or made available by the District to its employees such as group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits and pension or retirement benefits.

*29 CFR § 825.102*

### D. Health Care Provider

1. The term “health care provider” means a licensed doctor of osteopathy or medicine and other persons listed in the applicable regulation.

*29 CFR § 825.102*

E. Parent

1. The term “parent” means the biological or adoptive or step or foster parent of a child or any other person who stood in loco parentis to the employee when the employee was a son or daughter as defined in this policy.

*29 CFR § 825.102*

F. Son or Daughter

1. The term “son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing loco parentis. A child is: (a) less than 18 years of age; or (b) older than 18 years but incapable of self-care due to mental or physical disability.

*29 CFR § 825.102*

G. Spouse

1. The term “spouse” means a legal husband or wife.

*29 CFR § 825.102*

H. Serious Health Condition

1. The term “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider
2. “Inpatient care” means consisting of an overnight stay in a hospital, hospice, or residential medical facility, together with any period of incapacity or any subsequent treatment in connection with that care
3. Continuing treatment by a health care provider, includes:
  - a. Incapacity and treatment, which is
    - i. A period of incapacity of more than 3 consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition
    - ii. Which also involves:
      1. Treatment 2 or more times, within 30 days of the first day of incapacity (unless extenuating circumstances as defined by regulation exist) by a health care provider or by a nurse or provider of health care services under the direct supervision of or under orders of or on referral by a health care provider, or
      2. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the health care provider’s supervision.
  - b. Pregnancy or prenatal care, which is prenatal care or any period of incapacity due to pregnancy

- c. A chronic condition, which is
  - i. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition.
  - ii. A “chronic serious health condition” is one which
    - 1. Requires periodic visits (at least twice a year) for treatment by a health care provider or a nurse under direct supervision of a health care provider
    - 2. Continued over an extended period of time (including recurring episodes of a single underlying condition), and
    - 3. May cause episodic rather than a continuing period of incapacity (for example, asthma, diabetes, epilepsy, and so forth).
- d. Permanent or long term conditions
  - i. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective.
  - ii. The patient must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
  - iii. Examples of such conditions include Alzheimer’s, a severe stroke, or the terminal stages of a disease.
- e. Conditions requiring multiple treatments
  - i. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or a provider of health care services under orders of or on referral by a health care provider for
  - ii. Either
    - 1. Restorative surgery after an accident or other injury or
    - 2. A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.) or kidney disease (dialysis).
- f. Absences relating to pregnancy or chronic conditions
  - i. An absence related to pregnancy or chronic conditions (as described above) qualify for FMLA leave even if no treatment is received and the absence does not last more than three consecutive calendar days. For example, in ability to report for work because of the onset of an asthma attack or because of severe morning sickness.

*29 CFR § 825.113*  
*29 CFR § 825.114*  
*29 CFR § 825.115*

## 2. ELIGIBILITY

An eligible employee is entitled to a total of 12 work weeks of leave without pay during any 12-month period in the event of any of the following:

- A. The birth of a son or daughter of the employee and to care for that newborn son or daughter;
  - 1. An expectant mother may take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work.
- B. The placement of a son or daughter with the employee for adoption or foster care;
  - 1. A father, as well as a mother, can take family leave for the birth, placement for adoption or foster care of a child.
- C. A spouse, son, daughter or parent who has a serious health condition; or
- D. The employee suffers from a serious health condition that makes the employee unable to perform the essential functions of that employee's position.

An eligible employee is entitled to a total of 26 work weeks of leave without pay during a 12-month period to care for a covered service member with a serious illness or injury incurred in the line of duty on active duty.

An eligible employee is entitled to a total of 12 work weeks of leave without pay during a single 12-month period for any qualifying exigency arising out of a covered service member family member who is on active duty or called to active duty status in support of a contingency operation. A qualifying contingency exists in the following circumstances:

- A. Short-notice deployment;
- B. Military events and related activities;
- C. Child care and school activities;
- D. Financial and legal arrangements;
- E. Counseling;
- F. Rest and Recuperation;
- G. Post-deployment activities;
- H. Parental care; and
- I. Additional activities not encompassed in the above, but agreed to by the employee and the District.

*29 CFR § 825.112*  
*29 CFR § 825.200*

*29 CFR § 825.122*  
*29 CFR § 825.127*  
*29 CFR § 825.126*

### **3. CONCURRENT LEAVE**

The board hereby designates all paid or unpaid leave for any reason to be counted as part of and included in the Family Medical Leave so that an employee shall be entitled to no more than the maximum available leave allowed under the Family Medical Leave Act and other types of leave taken together.

The District hereby requires the employee to substitute any accrued vacation leave, personal leave, or family leave of the employee in place of any part of the FMLA week period of any leave under this policy.

Nothing shall require the District to provide paid sick leave, vacation leave, annual leave, or other type of paid leave in any situation where it is not otherwise provided under District policies.

*29 CFR § 825.207*

### **4. LIMITATIONS ON INTERMITTENT OR REDUCED SCHEDULE LEAVE**

An additional limitation applies where an instructional employee needs intermittent leave or leave on a reduced schedule which is foreseeable based on planned medical treatment and which is needed for the employee's own serious health condition or to care for a family member with a serious health condition or for a covered service member. If the employee would be on leave for more than 20% of the total number of working days over the period the leave would extend, then the District may require the employee to choose one of the following options:

- A. Take leave for a period or periods of a particular duration (not greater than the duration of the planned treatment); or
- B. Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

If the employee fails to give the required notice of the foreseeable leave, the District may require the employee to take one of the above-listed options or may require the employee to delay taking the leave until the notice requirements have been satisfied.

Leave that is taken for a period that ends with the school year and continues at the beginning of the next school year is not considered intermittent but is considered consecutive.

If an instructional employee chooses to take leave for periods of a particular duration in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

*29 CFR § 825.601*  
*29 CFR § 825.603(a)*

**5. FORESEEABLE LEAVE**

An employee shall make a reasonable effort to:

- A. Provide the District with at least 30 days prior written notice of any anticipated leave under this policy whenever the leave is foreseeable; and
- B. Schedule treatment so as not to unduly disrupt the operations of the District.

*29 CFR 825.302*

**6. EMPLOYER NOTIFICATION**

The District shall post in a conspicuous place on school premises a notice of rights under this policy [This Notice must be approved by the Secretary of Labor. See Policy Exhibit 1.]

Upon receipt of a written request for Family Medical Leave, the District will provide the employee written notification of the status of the leave request within 5 working days.

**7. SPOUSES OF EMPLOYEES EMPLOYED BY THE DISTRICT**

In any case where both husband and wife are employees of the District and both seek leave under this policy, such leave shall be limited to an aggregate of 12-work weeks during any 12-month period if:

- A. Leave is sought to care for a newborn daughter or son or the adoption of a daughter or son; or
- B. Leave is sought to care for a sick parent.

*29 CFR 825.201*

**8. CERTIFICATION FOR LEAVE FOR QUALIFYING EXIGENCIES**

All leave under this policy taken because of a military qualifying exigency shall be supported by a certification from the employee that includes:

- A. A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency which are sufficient to support the need for leave, including information on the type of qualifying exigency and any available written documentation which supports the request.
- B. The approximate date on which the qualifying exigency commenced or will commence.
- C. If the request is for leave for a single, continuous period of time, the beginning and end dates of the absence.
- D. If the request is for leave on an intermittent or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency.
- E. If the exigency involves meeting with a third party, appropriate contact information for the person with whom the employee is meeting (such as the name, title, organization, address, telephone number, and email) and a brief description of the purpose of the meeting.

- F. If the exigency involves Rest and Recuperation leave, a copy of the military member's Rest and Recuperation orders or other documentation indicating that such leave has been granted, and the dates of the leave.
- G. If the exigency is covered active duty or call to covered active duty status, then the first time that leave is requested because of that duty or call to duty, the employee must provide a copy of the orders or other documentation showing the status or call to status and the dates of the covered active duty service.

*29 CFR § 825.309*

## **9. REQUIRED MEDICAL CERTIFICATION**

All leave under this policy taken because of a serious health condition (of the employee or another) must be supported by a certification issued by a health care provider. (This requirement does not apply to leave taken for birth or adoption.)

- A. The Board hereby designates all qualifying leave as Family Medical Leave.
- B. The medical certification shall be provided at least fifteen (15) days after leave is requested or when the employee begins unforeseeable leave.
- C. A certification is sufficient if it states:
  - 1. The name, address, telephone number, fax number, and type of practice or specialty of the health care provider
  - 2. The approximate date on which the serious health condition commenced.
  - 3. The probable duration of the condition.
  - 4. A statement or description of appropriate medical facts regarding the health condition for which the leave is requested which are sufficient to support the need for leave. (This may include information on symptoms, diagnosis, hospitalization, doctor visits, whether medicine has been prescribed, referrals to other medical providers, or any regimen of continuing treatment.)
  - 5. If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition): information sufficient to establish that the employee cannot perform the essential functions of the employee's job as well as the nature of any other work restrictions and the likely duration of such inability.
  - 6. If the patient is a covered family member with a serious health condition, information sufficient to establish that the family member is in need of care and an estimate of the frequency and duration of the leave required to care for the family member.
  - 7. If intermittent or reduced-schedule leave is requested for planned treatment of a serious medical condition (of the employee or a family member), information sufficient to establish the medical necessity for such intermittent or reduced-schedule

leave and an estimate of the dates and duration of such treatments and any periods of recovery.

8. If intermittent or reduced-schedule leave is requested for the employee's serious health condition (including pregnancy) that may result in unforeseeable episodes of incapacity, information sufficient to establish the medical necessity for such intermittent or reduced-schedule leave and an estimate of the frequency and duration of the episodes of incapacity.
9. If intermittent or reduced-schedule leave is requested for to care for a covered family member with a serious health condition, a statement that such leave is medically necessary to care for the family member, which can include assisting in the family member's recovery, and an estimate of the frequency and duration of the required leave.

D. The District may require the employee taking Family Medical Leave to complete the attached Fitness for Duty Certification prior to his/her return to work at the District. See Policy Exhibit 2

*29 CFR § 825.202*  
*29 CFR § 825.312*

#### **10. REQUIRED MEDICAL CERTIFICATION FOR MILITARY CAREGIVER LEAVE**

When leave is taken to care for a covered service member with a serious injury or illness, the employee must provide a certification which satisfies the requirements of 29 CFR § 825.310.

*29 CFR § 825.310*

#### **11. OTHER PROVISIONS**

- A. An employee who takes leave in conformance with this policy is entitled to:
  1. be restored to the position held by the employee prior to leave; or
  2. be provided an equivalent position in terms of benefits, pay and responsibilities.
- B. No benefit accrued prior to taking leave shall be lost as a result of taking leave under this policy.
- C. The employee shall not accrue any seniority or employment benefits during any period of leave.
- D. The District may deny restoration of employment or an equivalent position to a key employee under circumstances and to the extent provided for by applicable regulations, which in general provide for this if:
  1. The denial is necessary to prevent substantial and grievous economic injury to the operations of the District;



2. The District notifies the employee that it intends to deny restoration when it determines that injury would occur;
  3. The employee elects not to return to employment after receiving notice; and
  4. The employee is paid on a salary basis and is among the highest paid 10% of employees of the District.
- E. If an employee fails to return to work after leave expires for reasons other than continuation, recurrence, or onset of a serious health condition of the employee, son, daughter, or spouse, or for other reasons outside of the employee's control then the District may recover the premium paid for maintaining coverage for the employee during the leave period.

*29 CFR 825.215*  
*29 CFR 825.213*  
*29 CFR 825.214*  
*29 CFR 825.216*  
*29 CFR 825.217*  
*29 CFR 825.218*  
*29 CFR 825.219*

## **12. RULES FOR INSTRUCTIONAL EMPLOYEE LEAVE NEAR END OF ACADEMIC TERM**

An “academic term” is a school semester, typically ending near the end of the calendar year and the end of the school year in the spring. (For FMLA purposes, the District cannot have more than 2 academic terms in a year.)

If an instructional employee begins leave more than 5 weeks prior to the end of an academic term, the employee must continue taking unpaid leave until the end of an academic term if:

- A. The leave requested is of at least 3 weeks duration; and
- B. The return to employment would occur during the 3-week period before the end of an academic term.

If the employee begins leave for reasons other than a personal serious health condition which commences less than 5 weeks prior to the end of an academic term, then the employee must continue to take unpaid leave until the end of an academic term if:

- A. The leave requested is of greater than a 2-week duration;
- B. The return to employment would occur during the 2-week period before the end of an academic term.

If the employee begins leave for reasons other than personal serious health condition during the period that commences 3 weeks prior to the end of an academic term and the leave is greater than 5 working days, then the employee must continue to take unpaid leave until the end of an academic term.

If an instructional employee is required under these rules to take leave until the end of the academic term, only the period of leave until the employee is ready and able to return to work is charged against the employee's FMLA leave allotment.

*29 CFR § 825.602*  
*29 CFR § 825.603*

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