

Descriptor Term:
FAMILY AND MEDICAL LEAVE

Descriptor Code: 7.4893

Legal References: Family and Medical Leave Act of 1993, as amended; U.S.C.S. §2601; 29 C.F.R. Part 825, Code of Federal Regulations, Title 29; National Defense Authorization Act of 2008, Pub. L. 110-181, § 585; *N.C. Public Schools Benefits and Employment Policy Manual*

Cross References: 7.4890 Leave of Absence

All eligible employees shall be provided with leave as required by the federal Family and Medical Leave Act of 1993 (FMLA) and applicable state laws and State Board of Education policies. The FMLA allows eligible employees to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks (26 weeks in certain cases) in any 12-month period for certain qualifying conditions or events. The employee may continue to participate in the school system's group insurance plan while on FMLA leave.

This policy is intended for guidance only and is not intended to alter or expand the school system's responsibilities beyond the requirements of law. If any provision of this policy is inconsistent with federal law or regulation, the federal rule must take precedence. The superintendent is authorized to develop additional regulations for FMLA leave consistent with the requirements of the law and this policy.

The board strictly prohibits interfering with, restraining or denying the ability of any employee to exercise any right provided by the FMLA. The board also strictly prohibits any type of discrimination against or discharge of an employee who has filed a complaint in regard to the FMLA. A copy of this policy shall be provided to any employee upon hiring.

A. DEFINITIONS

1. Serious Health Condition

A serious health condition is an illness, injury, impairment or physical or mental condition that involves either an overnight stay in a medical care facility or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job or prevents the qualified family member from participating in school or other daily activities.

2. Continuing Treatment

Subject to certain conditions, the continuing treatment requirement in the above definition of "serious health condition" may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment or incapacity due to pregnancy or a chronic condition. Other conditions may meet the definition of continuing treatment.

3. Qualified Family Member

A qualified family member is defined as an employee's spouse, child or parent.

4. Instructional Personnel

For purposes of this policy, instructional personnel are considered to be teachers, athletic coaches, driving instructors, special education assistants, and any other employee whose principal function is to teach and instruct students.

5. Qualified Military Service Exigency

A military service exigency that qualifies for FMLA leave must be defined in accordance with federal regulations. Qualified exigencies may include:

- a. short notice deployment;
- b. military events and related activities;
- c. school and childcare activities;
- d. financial and legal arrangements;
- e. counseling;
- f. rest and recuperation leave;
- g. post-deployment activities; and
- h. additional activities agreed upon by the board and employee.

6. Other Terms

Unless otherwise noted, all terms in this policy must be defined in accordance with 29 C.F.R. pt. 835.

B. ELIGIBILITY

Employees are eligible for unpaid FMLA leave if they have:

1. been employed by the school system for at least 12 months (but not necessarily consecutively); and
2. worked at least 1,250 hours during the previous 12 months.

C. QUALIFYING CONDITIONS

Except in cases of leave to care for a covered service member with a serious illness or injury, an eligible employee is entitled to a total of 12 workweeks of FMLA leave during any 12-month period for any one or more of the following reasons:

1. the pregnancy or birth and first-year care of the employee's child;
2. adoption of a child by employee or foster placement of a child with the employee;
3. a serious health condition of the employee or the employee's spouse, child or parent;

4. a qualifying exigency arising out of the fact that the spouse or a son, daughter or parent of the employee is on a federal call to active duty (or has been notified of an impending federal call or order to active duty) in the National Guard or Reserves (not in the regular Armed Forces) in support of a contingency operation; or
5. to care for a covered family member who has incurred a serious injury or illness in the line of duty while on active duty in the Armed Forces, provided that such injury or illness renders the family member medically unfit to perform his or her office, grade, rank or rating. Leave under this provision may be taken by an employee who is a spouse, son, daughter, parent or next of kin of the service member for up to 26 weeks.

D. DETERMINING THE 12-MONTH LEAVE PERIOD

The 12-month period during which an employee is eligible for FMLA leave shall be from July 1 to June 30, EXCEPT, the period for leave to care for a covered servicemember with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later.

E. ENTITLEMENT TO LEAVE

Eligible employees may take leave for qualifying conditions as follows:

1. Medical leave for serious health conditions: When an employee takes medical leave for a serious health condition of the employee or that of a qualified family member, the employee may take leave for only a combined total of 12 workweeks during a 12-month period. Such leave may be taken intermittently or on a reduced leave schedule as is medically necessary.
2. Family leave for pregnancy or birth of a child or placement of a child for foster care or adoption: When an employee takes leave for the pregnancy or birth of his/her child, placement of a child for foster care with him/her or adoption of a child by him/her, the employee may take leave for only a combined total of 12 consecutive workweeks during the 12-month period immediately following the birth of his/her child, foster care placement of the child with him/her or adoption of the child by him/her. Eligibility for such leave expires 12 months from the birth, foster care placement or adoption of the child. Such leave must be used in a single block of time unless the board agrees to another arrangement.
3. Qualified military service exigency: When an employee takes leave for a military service exigency, the employee may take leave for only a combined total of 12 workweeks during a 12-month period. Such leave may be taken intermittently or on a reduced leave schedule.
4. Leave to care for injured service member: When an employee who is a covered family member takes leave to care for an injured service member, the employee may take leave for a combined total of no more than 26 workweeks during a single 12-month period. Such leave may be taken intermittently or on a reduced leave schedule. If combined with other types of FMLA leave, the total leave taken in a single 12-month period still may not exceed 26 weeks.
5. Spouses employed by the school system: Spouses of an employee who are both employed by the school system and eligible for FMLA leave are limited in the amount of family leave they may take for the birth and care of a newborn child, for the placement of

a child for adoption or foster care or to care for a parent who has a serious health condition to a combined total of 12 weeks for all types of FMLA leave or 26 weeks if leave to care for a covered service member with a serious injury or illness is also used.

F. INTERMITTENT OR REDUCED WORK SCHEDULE

1. Subject to other provisions set forth in this policy, FMLA leave may be taken on an intermittent or reduced leave schedule as required for medical leave for a serious health condition of the employee or qualified family member, for a qualifying military service exigency, injury of service member or as otherwise provided herein. The employee must make a reasonable effort to schedule treatment so as not to disrupt unduly the operations of the school. Whenever possible, employees should discuss scheduling with their immediate supervisor prior to scheduling any medical treatment in order to accommodate the work schedule.
2. An employee requesting intermittent or reduced leave time for medical treatment of a serious health condition may be required to give the reasons for the intermittent or reduced leave schedule and the schedule for treatment.
3. To better accommodate an employee's need for intermittent or reduced leave for a serious health condition, the school system may require an employee to take an alternative position during the period of leave. The alternative position must have equal pay and benefits, but it does not have to have equivalent duties.
4. Intermittent leave may be taken in increments of one hour.
5. Instructional personnel are subject to special rules for taking intermittent or reduced leave. (See section G.)

G. INSTRUCTIONAL PERSONNEL

The following special rules apply to instructional personnel. For purposes of this policy, instructional personnel are considered to be teachers, athletic coaches, driving instructors, special education assistants and any other employee whose principal function is to teach and instruct students.

1. Use of Intermittent or Reduced Schedule Leave
 - a. Instructional employees may use intermittent or reduced schedule leave only when the employee and the school system have reached an agreement on how the leave will be used.
 - b. If an instructional employee requests intermittent or reduced schedule leave for more than 20 percent of the working days of the duration of a leave due to medical treatment for a serious health condition, the school system may require the employee to take continuous leave for up to the entire duration of the scheduled leave or to transfer to an alternative position with equivalent pay and benefits for the period of leave.
 - c. Instructional employees taking intermittent or reduced schedule leave that constitutes 20 percent or less of the working days during the leave period are not subject to transfer to an alternative position.

2. Extension of FMLA Leave at School System Discretion

Instructional personnel may be required to continue leave through the end of the school semester if any of the following conditions exist:

- a. the leave will begin more than five weeks before the end of the term; the leave will last at least three weeks; and the employee would return to work in the last three weeks of the academic term; or
- b. the leave is for a purpose other than the employee's own serious health condition or for a qualified military exigency; the leave will begin in the last five weeks of the term; the leave will last more than two weeks; and the employee would return to work during the last two weeks of the academic term; or
- c. the leave is for a purpose other than the employee's own serious health condition or for a qualified military exigency; the leave will begin in the last three weeks of the term; and the leave will last at least five days.

If instructional personnel are required 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 will be charged against the employee's FMLA entitlement.

H. EMPLOYEE'S RESPONSIBILITY WHEN REQUESTING

1. Employee's Responsibility When Leave is Foreseeable

- a. To ensure that employees receive proper notification of their rights and responsibilities and that leave is properly designated, all employees requesting any type of leave must make the request to the assistant superintendent of human resources or designee.
- b. An employee must provide at least 30 days advance notice of the need to take FMLA leave when the need is. If this amount of notice is not possible, the notice shall be given as soon as "practicable," taking into account all the facts and circumstances.

If the employee does not provide 30 days notice foreseeable leave and there is no reasonable justification for the delay, the school system may delay the taking of FMLA leave until at least 30 days after the employee provides notice of the need for FMLA leave (see Section G).

If an instructional employee fails to give required notice for foreseeable leave for an intermittent or reduced leave schedule, the employee may be required to take leave continuously for the duration of the treatment or be temporarily transferred to an alternative position for which the employee is qualified and that has the same benefits.

- c. Employees must provide sufficient information for the school system to reasonably determine whether the FMLA may apply to the leave request and the anticipated timing and duration of the leave. This information may include, but is not limited to the following:
 - i. notice that the employee is unable to perform job functions;

- ii. notice that the qualified family member is unable to perform daily activities;
- iii. notice of the need for hospitalization or continuing treatment by a health care provider; or
- iv. notice of circumstances supporting the need for military family leave.

In addition to the foregoing, the school system may require employees to provide medical or other certification to confirm any FMLA-qualifying event or condition of the employee or the employee's spouse, child, parent or next of kin, including certification for military exigency leave. Any information requested will be no more than that allowed by the FMLA and the Americans With Disabilities Act. The assistant superintendent of human resources may request a second or third verification of the foregoing at the school system's expense if there is reason to doubt the validity of a certification. Periodic recertification to support the leave may be required by the school system as permitted by law.

2. Employee's Responsibility When Leave is NOT Foreseeable

- a. When leave is not foreseeable, employees must comply with the usual school system procedures for notifying their supervisors of the absence and requesting leave, including any applicable requirements established in policy 7.4890 Leave of Absence. If the employee fails to do so, the leave may be delayed or denied.
- b. When giving notice of absence, the employee must inform the supervisor if the requested leave is for a reason for which FMLA leave was previously taken or certified.
- c. Employees also must notify the assistant superintendent of human resources or designee of the need for FMLA leave as soon as practicable.
- d. All employee responsibilities in the FMLA for notice, medical certification, fitness for duty certification and notice of intent to return to work apply as specified in this policy and policy 7.4890 Leave of Absence.

I. SCHOOL SYSTEM'S DESIGNATION AND NOTICE TO EMPLOYEE

- 1. Whether or not the employee specifically asks for FMLA leave, it is the responsibility of the assistant superintendent of human resources or designee to ask any questions necessary of the employee in order to make a determination of whether the leave is FMLA-eligible, unless the employee has already requested and received FMLA leave or certification for the same condition or event. The assistant superintendent of human resources may require notice of the need and the reason for leave.
- 2. The assistant superintendent for human resources or designee shall provide all legally-required notices to the employee within five days of receiving this information or otherwise learning that an employee's leave may be for an FMLA-qualifying reason, unless there is a justifiable delay, such as a delay for documentation.

The required notices must indicate whether the employee is eligible under the FMLA. If the employee is eligible, the notice must specify any additional information required from the employee as well as the employee's rights and responsibilities under the FMLA. If the employee is not eligible, the notice must provide a reason for the ineligibility. The

required notices also must include whether the leave will be designated as FMLA-protected and, if so, the amount of leave counted against the employee's leave entitlement.

3. Leave may be designated as both FMLA-eligible and as leave under the school system's paid leave policy if paid leave has been substituted. Such leave would be counted towards the 12-week FMLA entitlement. In addition, the assistant superintendent of human resources may designate an absence (taken as paid or unpaid leave) that meets the criteria for an FMLA-qualifying absence as part of the employee's total FMLA entitlement, whether or not the employee has requested FMLA leave (see section L).
4. Leave that has been taken for an FMLA-qualifying reason may be retroactively designated as FMLA leave, with appropriate notice to the employee, provided that doing so does not cause harm or injury to the employee.

J. CERTIFICATION

The school system reserves the right to require employees to provide certification of any FMLA-qualifying event or condition of the employee or the employee's spouse, child, parent or next of kin, including certification for military exigency leave. Any medical certification information requested will be no more than that allowed by the FMLA and the Americans With Disabilities Act. The assistant superintendent may request a second or third verification at the school system's expense if there is reason to doubt the validity of a medical certification. Periodic recertification to support the leave may be required, as permitted by law.

K. RETURN TO WORK

The school system may require an employee to periodically report on his or her status and intent to return to work. Any employee who is taking leave through the end of an academic semester will be required to report on his or her intent to return to work no later than four weeks before the end of the academic semester. In addition, the employee may be required to report on his or her intent to return to work on a regular basis while on FMLA leave.

Before returning to work from FMLA leave for the employee's own serious health condition, the employee will be required to present a "fitness-for-duty" certificate that states that the employee is able to return to work. This requirement does not apply to an employee taking intermittent leave unless the employee's condition presents a reasonable safety concern.

L. SUBSTITUTION OF PAID LEAVE

1. The school system shall substitute appropriate paid leave, including sick leave, personal leave and vacation time for unpaid, FMLA leave to the extent allowed by law and policy, giving proper notice to the employee that the leave is designated FMLA. If an employee's accrued paid leave is exhausted but an FMLA-qualifying reason for absence continues, the resulting absences will be protected FMLA leave until all allowable FMLA leave has been used, but such absences will be unpaid.
2. When an employee has an absence (taken as paid or unpaid leave) that meets the criteria for an FMLA-qualified absence, the absence may, with proper notice to the employee, be designated part of the employee's total annual FMLA entitlement. If the absence continues for more than 10 days, all employee responsibilities in the FMLA to provide notice for foreseeable and unforeseeable leave, medical certification, fitness for

duty certification and notice of intent to return to work apply as specified in this policy and policy 7.4890 Leave of Absence.

3. An employee must not be permitted to exhaust paid leave before beginning FMLA leave if it has been determined that the reason for using paid leave meets the FMLA eligibility requirements.

M. RESTORATION TO EQUIVALENT POSITION

1. Generally

Employees, except for "key" employees, shall be restored to an equivalent or the same position upon return from FMLA leave.

The equivalent position will have virtually identical pay, benefits and working conditions, including privileges, perquisites and status, as the position held prior to the leave. The position also must involve substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility and authority. All positions within the same job classification are considered to be "equivalent positions" for purposes of this policy, so long as these conditions are met. For licensed employees, all positions with the same salary and licensure requirements also will be considered equivalent positions, so long as these conditions are met.

2. Key Employees

"Key" employees do not have the right to be restored to an equivalent or the same position upon return from FMLA leave. Key employees are salaried FMLA-eligible employees who are among the highest paid 10 % of all employees. If restoring a key employee would result in substantial and grievous economic injury to the school system, then there is no obligation to restore the employee to the same or an equivalent position.

Employees will be informed at the time leave is taken if they are considered key employees and will be informed once a determination is made that the employee will not be restored to the same or an equivalent position. A key employee who has been informed that he or she will not be restored still has rights to health benefits for the full period in which he or she is eligible for FMLA leave.

N. CONTINUATION OF HEALTH BENEFITS

Health care coverage and benefits will be continued for the duration of FMLA leave on the same conditions as would have been provided if the employee had continued working. This includes key employees who have been notified that they will not be restored to an equivalent position. Employees do not have the right to the accrual of earned benefits during the leave. If an employee takes intermittent or reduced leave, he or she has the right to maintain the same health care benefits, but earned benefits may be reduced in proportion to hours worked where such a reduction is normally based upon hours worked.

The school system may recover from the employee the cost of health insurance premiums paid on behalf of the employee while the employee was on FMLA leave if the employee does not return to work after leave, so long as the reason for not returning does not relate to a serious health condition or to circumstances beyond the employee's control.

O. POSTING REQUIREMENT

The superintendent or designee shall ensure that notices of FMLA provisions and information on procedures for filing complaints are posted in places where employees and applicants would find it readily accessible.

P. RECORD KEEPING REQUIREMENT

The personnel department shall maintain records of the following information for at least three years:

1. basic payroll and identifying employee data;
2. dates (or hours) of FMLA leave taken by each employee; and
3. premium payments of employee benefits.

Medical information, such as that relating to medical certifications, also shall be maintained in the personnel department in confidential medical records.

Copies of employee notices, including general and specific notices, as well as any other documents describing employee benefits or policies and records of disputes between the school system and any employee regarding designation of FMLA leave shall be maintained by the assistant superintendent for human resources for at least three years.

Q. ENFORCEMENT

An employee may file a complaint with the U.S. Department of Labor or bring a private lawsuit against the school system for violations of the FMLA.

FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law that provides greater family or medical leave rights.

R. OUTSIDE EMPLOYMENT

An employee who is on FMLA leave may not engage in self-employment or employment for any employer while on continuous leave. Falsifying records and failure to correct records known to be false are violations of this policy and shall result in discipline, which may include termination from employment.