

## **FAMILY AND MEDICAL LEAVE ACT**

Sheridan County School District #2 will comply with the Family and Medical Leave Act, as revised. The district posts the mandatory FMLA Notice and upon hire provides all new employees with notices required by the U.S. Department of Labor (DOL) on Employee Rights and Responsibilities under the Family and Medical leave Act. The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

If an employee has any questions, concerns, or disputes with this policy, the employee must contact the Human Resources Office.

GENERAL PROVISIONS - Under this policy, Sheridan County School District #2 will grant up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees. Paid leave may be granted under Policy GCC-GDC. The leave provided solely under this policy will be unpaid.

ELIGIBILITY - To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

1. The employee must have worked for the district for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
2. The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the

**FAMILY AND MEDICAL LEAVE ACT**

leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.

3. The employee must work in a worksite where 50 or more employees are employed by the district within 75 miles of that office or worksite. The distance is to be calculated by using available transportation by the most direct route.

TYPE OF LEAVE COVERED - To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

1. The birth of a child and in order to care for that child.
2. The placement of a child for adoption or foster care and to care for the newly placed child.
3. To care for a spouse, child or parent with a serious health condition (described below).
4. The serious health condition (described below) of the employee.

For purposes of this policy, "child" refers to a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.

An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee's position. A serious health condition is defined as a condition that involves inpatient care at a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.

**FAMILY AND MEDICAL LEAVE ACT**

This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity requiring a visit to a health care provider within seven days of the incapacity, and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

An employee that misses five (5) consecutive work days for their own illness or the illness of an immediate family member, may be asked to provide a note from a licensed medical professional to determine applicability of this policy. Employees with questions about what illnesses are covered under this FMLA policy or under the district's sick leave policy are encouraged to consult with the Human Resource Office.

If an employee takes paid sick leave under Policy GCC/GDC for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the district may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

5. Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to cover active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military events and activities, 3) child care and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7)

**FAMILY AND MEDICAL LEAVE ACT**

post-deployment activities, and 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

"Covered active duty" means:

- a. in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
- b. in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for children for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.

- 6. Military caregiver leave (also known as covered service member leave) to care for an injured or ill service member or veteran.

An employee whose son, daughter, parent or next of kin is a covered service member may take up to 26 weeks in a single 12-month period to take leave to care for that service member. Next of kin is defined as the closest blood relative of the injured or recovering service member.

The term "covered service member" means:

- a. a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

**FAMILY AND MEDICAL LEAVE ACT**

- b. a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

The term "serious injury or illness":

- a. in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and
- b. in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered service member, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

AMOUNT OF LEAVE - An eligible employee can take up to 12 weeks for the FMLA circumstances (1) through (5) above under this policy during any 12-month period. The district will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the district will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is

**FAMILY AND MEDICAL LEAVE ACT**

entitled to take at that time. An eligible employee can take up to 26 weeks for the FMLA circumstance (6) above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the district will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

If a husband and wife both work for the district and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for an immediate family member with a serious health condition, the husband and wife may only take a combined total of 12 weeks of leave. If a husband and wife both work for the district and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

**EMPLOYEE STATUS AND BENEFITS DURING LEAVE** - While an employee is on leave, the district will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

While on unpaid leave, the employee must reimburse the district for health/dental insurance premiums, either in person or by mail. The payment must be received in the Business Office by the 1st day of each month. If the payment is not received by the 25th of that month, the employee's health care coverage may be dropped for the duration of the leave. The employer will provide 15 days' notification prior to the employee's loss of coverage.

While the employee is on unpaid leave, the employee may request in writing, continuation of such benefits and reimburse the district for his or her portion of the premiums, with approval from the Superintendent

**EMPLOYEE STATUS AFTER LEAVE** - An employee who takes leave under this policy for the employee's own serious health condition may be asked to provide a fitness for duty (FFD) clearance from the health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits, and other

**FAMILY AND MEDICAL LEAVE ACT**

employment terms. The position will be the same or one that is virtually identical in terms of pay, benefits, and working conditions. The district may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

USE OF PAID AND UNPAID LEAVE - An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all paid leaves (vacation, personal, sub dock, wellness or sick leave) pursuant to Policy GCC/GDC prior to being eligible for unpaid leave.

Leave for the birth of the child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with maternity leave pursuant to policy GCC/GDC. An employee who is taking leave for the birth of a child, or the adoption or foster care of a child must use all paid leave pursuant to Policy GCC/GDC prior to being eligible for unpaid leave.

An employee who is using military FMLA or military caregiver FMLA leave for a qualifying exigency must use all paid leave pursuant to Policy GCC/GDC prior to being eligible for unpaid leave.

INTERMITTENT LEAVE OR A REDUCED WORK SCHEDULE - The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year), or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member over a 12-month period).

The district may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious

**FAMILY AND MEDICAL LEAVE ACT**

health condition or to care for a child after birth, or placement for adoption or foster care.

For the birth, adoption, or foster care of a child, the district and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave under this policy for the birth, adoption, or foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the district before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

CERTIFICATION FOR THE EMPLOYEE'S SERIOUS HEALTH CONDITION - The district will require certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the Department of Labor (DOL) Certification of Health Care Provider for Employee's Serious Health Condition Form.

The district may directly contact the employee's health care provider for authentication or clarification purposes using a health care professional, an HR professional, leave administrator, or management official. The district will not use the employee's direct supervisor for this contact. Before the district makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. If an employee chooses not to provide the district with authorization allowing the employer to clarify the certification with the health care provider, and does not otherwise clarify the certification, the District may deny the taking of FMLA leave if the certification is unclear.

The district has the right to ask for a second opinion, if it



**FAMILY AND MEDICAL LEAVE ACT**

has reason to doubt the certification. The district will pay for the employee to get a certification from a second doctor, which the district will select. The district may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the district will require the opinion of a third doctor. The district and the employee will mutually select the third doctor, and the district will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

**CERTIFICATION FOR THE FAMILY MEMBER'S SERIOUS HEALTH CONDITION -**  
The district will require certification for the family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition Form.

The district may directly contact the employee's family member's health care provider for authentication or clarification purposes using a health care professional, an HR professional, leave administrator, or management official. The district will not use the employee's direct supervisor for this contact. Before the district makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. If an employee chooses not to provide the district with authorization allowing the employer to clarify the certification with the health care provider, and does not otherwise clarify the certification, the District may deny the taking of FMLA leave if the certification is unclear.

The district has the right to ask for a second opinion if it has reason to doubt the certification. The district will pay for the employee's family member to get a certification from a second doctor, which the district will select. The district may deny FMLA leave to an employee whose family member refuses to release

**FAMILY AND MEDICAL LEAVE ACT**

relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the district will require the opinion of a third doctor. The district and the employee will mutually select the third doctor, and the district will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

**CERTIFICATION OF QUALIFYING EXIGENCY FOR MILITARY FAMILY LEAVE -** The district will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave.

**CERTIFICATION FOR SERIOUS INJURY OR ILLNESS OF COVERED SERVICEMEMBER FOR MILITARY FAMILY LEAVE -** The district will require certification for the serious injury or illness of the covered service member. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Service Member.

**RECERTIFICATION -** The district may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days and only when circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the district may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. The district may provide the employee's health care provider with the employee's attendance records and ask whether the need for leave is consistent with the employee's serious health condition.

## **FAMILY AND MEDICAL LEAVE ACT**

PROCEDURE FOR REQUESTING FMLA LEAVE - All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the HR Office. Within five business days after the employee has provided this notice, HR will provide the employee with written notice of their FMLA eligibility and rights.

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the district's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

DESIGNATION OF FMLA LEAVE - Within five business days after the employee has submitted the appropriate certification form, HR will provide the employee with a written response to the employee's request for FMLA leave.

INTENT TO RETURN TO WORK FROM FMLA LEAVE - On a basis that does not discriminate against employees on FMLA leave, the district may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

29 U.S.C. 2601, et seq. (Family and Medical Leave Act)

See also policies:

GCC/GDC - Staff Leave and Absences

First Reading: 5-4-20  
Second Reading: 6-15-20