

PERSONNELGENERAL PERSONNEL – Family and Medical Leave Act (FMLA)

The Regional Office of Education is committed to compliance with the Family and Medical Leave Act (FMLA) of 1993. The FMLA allows eligible employees to obtain unpaid leaves of absence for certain family and medical reasons for up to 12 weeks, with job protection and no loss of service accumulated prior to the commencement of the leave, provided the employee returns to work.

To be eligible for leave under the FMLA, an employee must:

1. have been employed by the ROE for a total of at least 12 months; and
2. have worked at least 1,250 hours during the 12 months before commencement of the leave.

Eligible employees are entitled to take up to 12 unpaid workweeks of leave during a 12-month period for any of the following reasons:

1. the birth and care of a child of the employee;
2. the placement of a child with the employee for adoption or state sanctioned foster care;
3. to care for a spouse, child (who is under 18 years of age or incapable of self-care due to a disability), or parent (not parent-in-law) with a serious health condition; or
4. an employee's own serious health condition, which renders the employee unable to perform his or her job.

For purposes of this policy, the ROE will use a “rolling” 12-month period measured backward from the date an employee uses any FMLA leave.

Any leave taken for the birth or care of a child or the placement of a child for adoption or foster care must be completed within 12 months after the date of birth or placement.

For purposes of the FMLA, “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves:

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1. in-patient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, or any period of incapacity or subsequent treatment connected with such in-patient care; or
2. any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) which is:
 - more than three consecutive calendar days and involves two or more treatments by (or under the supervision of) a health care provider, or one treatment by a health care provider which results in a regimen of continuing treatment under the supervision of a health care provider; or
 - due to pregnancy or for prenatal care; or
 - due to a condition that requires periodic treatments by (or under the supervision of) a health care provider, over an extended period of time and may cause episodic rather than a continuing period of incapacity (a “chronic serious health condition” such as asthma, diabetes, or epilepsy); or
 - permanent or long-term due to a condition for which treatment may not be effective, but for which the employee or family member is under the continuing supervision of a health care provider (e.g., Alzheimer’s, or terminal stages of a disease); or
3. any period of absence to receive multiple treatments by (or under the supervision of) a health care provider either for restorative surgery after an accident or injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (i.e., chemotherapy, radiation, etc.) or kidney diseases (i.e., dialysis).

Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental problems, and

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similar afflictions are not a “serious health condition” and, therefore, do not qualify for FMLA leave.

For purposes of the FMLA, “health care provider” means:

- doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices; or
- podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manus manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; or
- nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law; or
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or
- any other health care provider from whom the ROE or the ROE’s group health plan benefit manager will accept medical certification of the existence of a serious health condition to substantiate a claim for benefits.

If both the husband and wife are employed by the ROE and eligible for FMLA leave, they are permitted to take only a combined total of 12 weeks of leave during a 12-month period if the leave is for the birth and care of a child, the placement of a child for adoption or foster care, or to care for a parent (not a parent-in-law) with a serious health condition.

An eligible employee who requests medical leave based upon the serious health condition of the employee or the employee’s family member may request that such leave be taken on an intermittent or a reduced leave schedule. “Intermittent leave” is leave of one hour or more that is taken during any nonconsecutive time period (e.g., one week on, one week

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off). “Reduced leave” is leave that is taken by reducing the employee’s normal working hours (e.g., from eight hours to four hours per day). A request for either intermittent or reduced leave will be granted only where medically necessary, as established by information requested in the ROE’s FMLA medical certification form.

If such intermittent or reduced leave is foreseeable, the ROE may alter the employee’s existing job (while maintaining existing pay and benefits), or may temporarily transfer the employee to a different position with equivalent pay and benefits, in order to best serve the ROE’s operational needs during the leave.

The ROE may consider requests for intermittent or reduced leave in conjunction with the birth, adoption, or foster placement of a child, but the ROE is not obligated to grant such requests under any circumstances and will do so only at its sole discretion.

Special Rules for Instructional Employees

For purposes of the FMLA, instructional employees are those employees whose principal function is to teach and instruct students in a class, small group, or an individual setting, including teachers. It does not include teacher aides who do not actually teach or instruct, counselors, psychologists, social workers, curriculum specialists, or other auxiliary personnel.

Regarding reduced and intermittent leave, if an instructional employee requests intermittent or reduced-schedule leave to care for a family member or for the instructional employee’s own serious health condition and the instructional employee would be on leave for more than 20 percent of the instructional employee’s total number of working days over the period the leave would extend, the ROE may require the instructional employee to choose either to:

- take leave for a period of particular duration, not greater than the duration of the planned treatment; or
- temporarily transfer to an available alternative position with equivalent pay and benefits, which better accommodates the recurring periods of leave.

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Regarding leave near the end of an academic term, the ROE may require an instructional employee to extend FMLA leave through the end of an academic term under the following circumstances:

- If an instructional employee takes an FMLA leave of at least three weeks, which begins more than five weeks prior to the end of an academic term, and if the
- Employee would otherwise return to work during the last three weeks of the academic term;
- If an instructional employee takes a leave of more than two weeks for a reason other than the employee's serious medical condition, and if the leave commences during the last five weeks of the academic term and would otherwise end during the last two weeks of the term;
- If an instructional employee takes a leave for a reason other than the employee's own serious medical condition, which begins less than three weeks before the end of the academic term, and if the leave will last more than five days.

In the case of an instructional employee who is required to take leave until the end of any 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.

LEG REF.: Family and Medical Leave Act of 1993

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