

## **AR 4161.4/4261.4/4361.4 – ALL PERSONNEL - FAMILY AND MEDICAL LEAVE**

Note: Unless the Board has decided to apply the protections of FMLA and AFLA to all school sites, regardless of the number of employees within a certain radius, the District should conduct a regular review of the eligibility of its sites.

All school sites are covered by the Family & Medical Leave Act of 1993 (FMLA). The Superintendent or designee shall determine which sites are covered by Alaska's Family Leave Act (AFLA). Employees at those sites shall be notified of the coverage determination through reasonable means. The determination of site coverage will be reviewed on a periodic basis.

### **A. Eligibility for Leave**

Note: Different rules apply under FMLA and AFLA. Accordingly, it is important to determine which of these laws apply to an individual employee. If both apply, the employee is entitled to the more generous protections.

Note: If an employee is an active duty or reserve military member who has been absent from work due to service covered by USERRA (Uniformed Services Employment and Reemployment Rights Act), all periods of USERRA absence are counted towards the employee's eligibility for FMLA leave.

Employees are eligible for FMLA leave if they:

Have been employed by the District for at least a year and have worked at least 1,250 hours in the preceding 12 calendar months immediately preceding the request for leave. Employers are required to count any service an employee had with an employer prior to a break in service of up to seven years toward his or her 12-month employment eligibility threshold.

Employees are eligible for AFLA leave if they:

1. Have worked for the District at least 35 hours per week for at least six consecutive months, or at least 17.5 hours per week for at least twelve consecutive months, preceding the request for leave.  
and
2. Are employed at a work site that has employed at least 21 employees within 50 road miles during any period of 20 consecutive workweeks in the preceding two calendar years. Employees with questions about their eligibility for FMLA or AFLA leave should contact [title of leave administrator] for more information.

### **B. Qualifying Reasons for Basic FMLA and AFLA Leave**

Note: FMLA provides for "basic leave" as well as for military family leave.

Employees who meet the eligibility requirements described above are eligible to take leave for the following reasons:

1. To care for the employee's infant during the first 12 months following birth;
2. To care for a child during the first 12 months following the employee's adoption of the child or foster care placement of the child with the employee;
3. To care for a spouse, child, or parent with a serious health condition;
4. For incapacity due to the employee's pregnancy, prenatal medical care, or childbirth; or

5. Because of the employee's own serious health condition that renders the employee unable to perform an essential function of his or her position.

### **Definitions**

For purposes of the above:

"**Child**" means the employee's biological child, adopted child, stepchild, foster child, or legal ward, so long as the child is under 18 or, if 18 or older, is incapable of self-care because of mental or physical disability. However, under AFLA, "child" does not include stepchild for purposes of caring for the child following adoption.

"**Parent**" under AFLA means a biological or adoptive parent, parent-in-law, or stepparent. "Parent" under FMLA means biological, adoptive, step or foster parent, or any other individual who stood "in loco parentis" (in the role of a parent) to the employee when the employee was a child; it does not include parent-in-law.

"**Serious health condition**" means an illness, injury, impairment, or physical or mental condition that involves (1) inpatient care in a hospital, hospice, or residential health care facility; or (2) continuing treatment or supervision by a health care provider.

"**Spouse**" means a husband or wife. Husband or wife refers to the other person to whom the employee is legally married, including a same-sex spouse. It may also include a common law spouse if common law marriage is recognized in the state where the marriage took place and the individuals qualified as common law spouses before leaving that state.

### **C. Total Amount of Leave Availability**

FMLA provides up to 12 weeks of unpaid leave during any 12-month period, as defined by the District.

AFLA provides a total of 18 weeks of unpaid leave during any 24-month period because of a serious health condition of the employee or qualifying family member.

AFLA provides a total of 18 weeks of unpaid leave during any 12-month period because of pregnancy and childbirth or adoption. The right to take leave for this reason expires one year after the birth or placement of the child. The District can require that an employee using leave for this reason take the leave in a single block of time.

The District defines its 12-month period for determining total leave availability by use of the rolling calendar. The 12-month period is measured backwards from the first date for which leave is requested, to avoid stacking of back-to-back leave entitlements.

### **Married Couples**

Special rules apply to married couples who are employed by the District:

FMLA: Under FMLA, two spouses together may take a *combined* total of 12 weeks leave during any 12-month period for birth or adoption of a child, or to care for the same parent with a serious health condition.

AFLA: Under AFLA, the District is not required to grant simultaneous leave to both spouses to care for a parent or child with a serious health condition.

### **D. Military Family Leave**

FMLA provides for two types of Military Family Leave.

## **1. Qualifying Exigency Leave**

Employees meeting FMLA eligibility requirements may be entitled to use up to 12 weeks of their basic FMLA leave entitlement to address certain qualifying exigencies. Leave may be used if the employee's spouse, son, daughter, or parent is a military member and is on covered active duty or called to covered active duty status in the National Guard or Reserves in support of a contingency operation.

"Military member" includes members of the National Guard and Reserves and the Regular Armed Forces.

"Covered active duty" means deployment to a foreign country.

Qualifying exigencies may include:

- Short-notice deployment (up to 7 days of leave)
- Attending certain military events
- Childcare and school activities
- Addressing certain financial and legal arrangements
- Periods of rest and recuperation for the servicemember (up to 15 days of leave)
- Attending certain counseling sessions
- Attending post-deployment activities (available for up to 90 days after the termination of the servicemember's active duty status)
- Caring for the military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty.
- Other activities arising out of the servicemember's active duty or call to active duty and agreed upon by the District and the employee.

## **2. Leave to Care for a Covered Servicemember**

Employees meeting FMLA eligibility requirements may take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period.

A "covered servicemember" is a current member of the Armed Forces - including a member of the National Guard or Reserves, or a member of the Armed Forces who is on the temporary disability retired list - with a serious injury or illness incurred in the line of duty while on active duty, which may render the servicemember medically unfit to perform his or her duties, and for which the servicemember is undergoing medical treatment, recuperation, or therapy; or otherwise is in outpatient status.

A "covered servicemember" also includes covered veterans who are undergoing medical treatment, recuperation, or therapy for a serious injury or illness. A covered veteran is an individual who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

When both husband and wife work for the District, the aggregate amount of leave that can be taken by the husband and wife to care for a covered servicemember is 26 weeks in a single 12-month period.

## **E. Use of Leave, Including Intermittent And Reduced-Schedule Leave**

An employee does not need to use FMLA or AFLA leave in a single block. Rather, leave can be taken intermittently or on a reduced leave schedule *when medically necessary*.

Leave because of a serious health condition, or either type of family military leave under FMLA, may be taken intermittently (in separate blocks of time due to a single health

condition) or on a reduced-schedule leave (reducing the usual number of hours worked per workweek or workday), so long as medically necessary.

If leave is unpaid, the District will reduce the employee's salary based on the amount of time actually worked. In addition, while an employee is on an intermittent or reduced-leave schedule, the District may temporarily transfer the employee to an available alternative position that better accommodates the recurring leave and which has equivalent pay and benefits.

Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the District's operations. Leave may not be taken on an intermittent basis when used to care for the employee's own child during the first year following birth, or to care for a child placed with the employee for foster care or adoption, unless both the employer and employee agree to such intermittent leave.

Military family leave due to qualifying exigencies may also be taken on an intermittent basis.

#### **F. Right to Transfer for Pregnant Employee (Provided by AFLA Only)**

A pregnant employee entitled to AFLA protections may request a transfer to a suitable position. A position is suitable if: 1) it is an existing unfilled position in the same administrative division in which the employee is currently employed and is less strenuous or less hazardous than the employee's current position; 2) the transfer is recommended by a licensed healthcare provider; 3) the employee is qualified and immediately available to perform the duties of the position; and 4) the transfer will not subject the District to liability for violating a collective bargaining agreement or employment contract.

If an employee has requested transfer to a suitable position, the District may not fill the position with someone other than the requesting employee until the District has offered the position to the employee and the employee has refused.

An employee who transfers under this provision shall be compensated at the lesser of: 1) the employee's compensation immediately before requesting the transfer; or 2) the compensation of the position into which the employee transfers.

#### **G. Pay, Benefits, and Protections During FMLA Leave**

**FMLA and AFLA leave is unpaid.** While on FMLA or AFLA leave, employees may be eligible for short- or long-term disability payments and/or workers' compensation benefits, if leave is taken because of an employee's own serious health condition.

**Substitution of paid time off for unpaid leave.** The District requires employees to substitute accrued paid leave for unpaid FMLA and AFLA leave, as determined by the terms and conditions of the District's normal leave policies or negotiated agreements. If an employee requests leave because of birth, adoption, or foster care placement of a child, any accrued annual leave, personal leave, or other applicable leave, first will be substituted for unpaid family/medical leave.

If an employee requests leave because of the employee's own serious health condition, or to care for a covered family member with a serious health condition, any accrued paid annual leave, personal leave, sick leave, or other applicable leave, first will be substituted for any unpaid family/medical leave. The same rules apply for qualifying exigency leave or to care for a servicemember.

The substitution of paid leave for unpaid leave does not extend the total leave entitlement provided by FMLA or AFLA. Furthermore, in no case can the substitution of paid leave for unpaid leave result in the receipt of more than 100 percent of an employee's salary. An employee's family medical leave runs concurrently with other types of leave. FMLA and AFLA leave also run concurrently.

The employer will not provide paid sick leave or paid medical leave in any situation in which the employer would not normally provide such paid leave.

**Medical and other benefits.** During an approved FMLA leave, the District will maintain the employee's group health plan coverage as if the employee continued to be actively working. If paid leave is substituted for unpaid family medical leave, the District will continue to deduct the employee's portion of the health plan premium as a regular payroll deduction. If leave is unpaid, the employee must pay his or her portion of the premium through [the District should specify the method they will use].

If only AFLA leave applies, or if the employee qualifies for both FMLA and AFLA leave and FMLA leave has been exhausted, the District [will or may] require that the employee pay the full costs of health plan coverage as a condition of maintaining those benefits during any period of unpaid AFLA leave. Premium payments will be paid by the employee as set forth above.

An employee's healthcare coverage will cease if the employee's premium payment is more than 30 days late. If the payment is more than 15 days late, the District will send the employee a letter to this effect. If the District does not receive the payment within 15 days after the date of that letter, the employee's coverage may cease. If the employee elects not to return to work for at least 30 calendar days at the end of the leave period, the employee will be required to reimburse the District for the cost of the premiums paid by the District for maintaining coverage during the unpaid leave, unless the employee cannot return to work because of a serious health condition or other circumstances beyond the employee's control.

Use of FMLA or AFLA leave will not result in the loss of any employment benefit that accrued prior to the start of the employee's leave.

**Return to job at end of FMLA leave.** Upon return from FMLA or AFLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

#### **H. Instructional Employees (FMLA Leave Only)**

Special rules apply to school districts regarding FMLA leave. In cases where the special rules for instructional employees apply, the Superintendent may apply those special rules or the general FMLA rules as best serves the interests of the District.

"Instructional employees" are those employees whose principal function is to teach and instruct students in a class, small group or an individual setting. The term does not include administrators, teacher assistants or aides who do not have as their principal job actual teaching or instruction, nor does it include positions such as counselors, psychologists or curriculum specialists. It also does not include cafeteria works, maintenance workers, or bus drivers.

**Summer months.** For all District employees, instructional and non-instructional, whose positions do not work during the period between school years (the summer months),

FMLA leave will only apply to scheduled work days and is not counted over the summer break. Employees who end the school year on FMLA can continue FMLA at the beginning of the next school year, provided the employee has not used all of the twelve (12) weeks of their annual FMLA leave as allowed by law.

**Medical treatment impacting on instructional time.** If an instructional employee wants to take foreseeable intermittent leave or reduced-schedule leave because of planned medical treatment, and the leave is more than twenty (20) percent of the total number of working days in the period over which the leave would extend, the District may require the employee to take the entire period of leave in a block, or may transfer the employee to an alternative placement for the period of planned leave. This decision is at the discretion of the District.

**Leave towards the end of the school term.** If an instructional employee begins FMLA leave more than five (5) weeks before the end of the term, and the leave lasts at least three (3) weeks, the District has the right to require the instructional employee to remain on leave for the rest of the school term.

If an instructional employee begins FMLA leave five (5) weeks or less before the end of the term, and the leave will last more than two (2) weeks for a reason other than his or her own health condition, the District has the right to require the instructional employee to remain on leave for the rest of the school term.

If an instructional employee begins FMLA leave with three (3) weeks or less before the end of the term and the leave will last more than five (5) working days for a reason other than his or her own health condition, the District has the right to require the instructional employee to remain on leave for the rest of the school term.

In the cases above where the District has exercised its right to extend the leave time, the leave is unpaid and is not charged against the employee's annual FMLA entitlement.

### **I. Employee Responsibilities When Requesting Leave**

**FMLA Requirements:** If the need to use FMLA leave is foreseeable, the employee must give the District at least 30 days prior notice of the need to take leave. When 30 days notice is not possible, the employee must give notice as soon as practicable (within 1 or 2 business days of learning of the need for leave except in extraordinary circumstances).

Failure to provide such notice may be grounds for delaying the start of FMLA leave.

Employees can be asked to explain why providing 30 days notice of leave was not practicable.

**AFLA Requirements:** If the need to use AFLA leave is foreseeable based on an expected birth or adoption, or on planned medical treatment, the employee shall provide prior notice of the expected need for leave in a manner that is reasonable and practicable.

If the leave is foreseeable based on planned medical treatment, the employee shall make a reasonable effort to schedule the treatment so as not to unduly disrupt the District's operations, subject to the approval of the healthcare provider of the employee or the employee's child, spouse, or parent. Employees should attempt to schedule medical treatment around work so as to permit employees to work as much of their workday as possible.

Requests for family and medical leave should be submitted to [Human Resources or title of FMLA administrator] using the Request for Family/Medical Leave form available from [Human Resources; title of FMLA administrator].

When submitting a request for leave, the employee must provide sufficient information for the District to determine if the leave might qualify as FMLA/AFLA leave. The employee must also provide information on the anticipated date when the leave will start as well as the duration of the leave. Sufficient information may include that the employee is unable to perform job functions; that a family member is unable to perform daily activities; that the employee or family member needs hospitalization or continuing treatment by a healthcare provider; or the circumstances supporting the need for military family leave. Employees also must inform the District if the requested leave is for a reason for which FMLA/AFLA leave was previously taken or certified. Employees are required to provide a certification and periodic recertification supporting the need for leave for a serious health condition.

#### **J. Employer Responsibilities**

When an employee requests leave, the District will advise the employee within five (5) business days whether he or she is eligible under FMLA and/or AFLA leave, assuming the employee has provided the required information to allow the District to make this determination. If the employee is eligible, the employee will be given a written notice that includes details on any additional information he or she will be required to provide, including medical certification. If the employee is not eligible, the District will provide the employee with a written notice indicating the reason for ineligibility.

The District will designate all qualifying leaves as FMLA or AFLA leave, even if the employee has not made a family and medical leave request, for example, when requesting sick leave, requesting annual leave to care for a sick family member, or taking workers' compensation leave. Any leave for a serious health condition of more than three days may qualify for FMLA/AFLA leave. If an employee takes leave for a medical condition involving more than three consecutive calendar days of incapacity and needs to have two visits to a healthcare provider, those visits must occur within 30 days of the period of incapacity for the condition to be classified as a serious health condition. Also, for a chronic serious health condition to be present, an employee must make at least two visits per year to a healthcare provider. If leave will be designated as FMLA or AFLA leave, the District will inform the employee in writing and provide information on the amount of leave that will be counted against the employee's leave entitlement under these law.

#### **K. Medical Certification**

If the employee is requesting leave because of the employee's own or a covered family member's serious health condition, the employee and the relevant healthcare provider must supply appropriate medical certification. This is at the employee's expense. Employees may obtain Medical Certification forms from [the Human Resources Department]. When the employee requests leave, the District will notify the employee of the requirement for medical certification and when it is due, which shall be no more than 15 days after the leave request. If the employee provides at least 30 days notice of medical leave, he or she should provide the medical certification before leave begins. Failure to provide requested medical certification in a timely manner may result in denial of leave until it is provided.

The District, at its expense, may require an examination by a second healthcare provider designated by the District, if it reasonably doubts the medical certification initially provided. If the second healthcare provider's opinion conflicts with the original medical certification, the District, at its expense, may require a third, mutually agreeable, healthcare provider to conduct an examination and provide a final and binding opinion. The District requires subsequent medical recertification, at the employee's expense. Recertification shall be not more often than every 30 days, unless the law provides for more frequent recertification. Failure to provide requested recertification within 15 days, except in extraordinary circumstances, may result in the delay of further leave until it is provided. For employees on intermittent leave, the District will require recertification every six (6) months.

#### **L. Status Reporting While on Leave**

If an employee takes leave because of the employee's own serious health condition or to care for a covered family member, the employee must contact the District on [the first and third Tuesday of each month, for example] regarding the status of the condition and his or her intention to return to work. In addition, the employee must give notice as soon as practicable (within 2 business days, if feasible) if the dates of the leave change, are extended, or were unknown initially.

#### **M. Moonlighting Prohibited**

The District prohibits employees who are on approved family and medical leave from engaging in other employment during the dates and times the employee would otherwise have been working for the District. Should an employee desire an exception, the employee must submit a written request to the Superintendent. The written request must explain why the employee seeks to engage in work for another employer or entity and why such work is feasible when the employee is unable to work for the District. The Superintendent may grant, deny, or grant in part, the employee's request, within the Superintendent's discretion.

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