

## **BP 4161.4/4261.4/4361.4 FAMILY AND MEDICAL LEAVE**

**Note:** *Your district may be a “covered employer” under both the federal Family and Medical Leave Act (FMLA) and the Alaska Family Leave Act (AFLA). Covered employers must provide its employees with the benefits of these laws. FMLA covers employers who have at least 50 employees within 75 miles. AFLA covers public school district sites which have had at least 21 employees within 50 road miles during any period of 20 consecutive workweeks in the preceding two calendar years. Accordingly, some smaller districts may be covered by AFLA only, or, potentially, may not be covered at all. Additionally, some sites may be exempt from coverage while other sites in a district are covered. School districts can adopt a more generous policy by allowing employees who meet the hours-worked requirements to be eligible for family leave, regardless of the number of employees within a given radius.*

The Board is committed to providing employees with family and medical leave in compliance with the Family and Medical Leave Act (FMLA) and the Alaska Family Leave Act (AFLA), as applicable. When both laws apply, the provisions more generous to the employee will govern.

In recognition that FMLA and AFLA provide some employer options for implementation of leave, the Board directs that leave under these laws will be implemented as set forth below. To the extent only AFLA leave applies, and AFLA does not contain specific requirements for implementation of that leave, the Board adopts by policy those procedures and employer rights set forth in FMLA and its regulations. The Superintendent shall develop regulations, in accordance with this policy, setting forth the qualifications, entitlements, and procedures for leave in compliance with these laws.

*(cf. 4161 – Leaves)*

### **Covered Employees**

**Note:** *FMLA and AFLA are triggered when an employee has worked the requisite number of hours for a school district. AFLA protections will apply sooner than FMLA protections, especially for new employees or part-time employees. Accordingly, any employee who qualifies under FMLA due to length of service will qualify under AFLA. Because AFLA provides greater leave entitlements, school district employees will usually be entitled to 18 weeks of leave.*

Eligibility for FMLA and AFLA leave, as applicable, shall be based entirely on eligibility criteria established by these laws. This policy is not intended to expand eligibility for FMLA or AFLA leave beyond that which is legally required.

Under FMLA, an employee who has worked for the District for at least one year, and for 1,250 hours over the previous twelve months, is entitled to up to 12 weeks of leave for qualifying events. Under AFLA, an employee who has worked for the District for at least 35 hours a week in the last six consecutive months, or at least 17.5 hours a week during

the preceding twelve months, is entitled to up to 18 weeks of leave for qualifying events. Leave which qualifies under both FMLA and AFLA is to be used simultaneously.

Unused family and medical leave does not accumulate from year to year.

### **Reasons for Taking Leave**

**Note:** *FMLA provides for two forms of military-related leave that are not covered by AFLA. Qualifying exigency leave and military caregiver leave are set forth in items 6 and 7 below. Districts not covered by FMLA may choose to provide similar military family leave.*

Covered employees will be granted leave for the following reasons:

1. To care for the employee's infant child during the first 12 months following birth;
2. To care for a child during the first 12 months following placement with the employee for adoption or foster care;
3. To care for a spouse, son, daughter, or parent with a serious health condition;
4. For incapacity due to the employee's pregnancy, prenatal medical care or child birth;
5. Because of the employee's own serious health condition that renders the employee unable to perform the employee's job;
6. If FMLA is applicable, for qualifying exigency leave if the employee's spouse, son, daughter, or parent is a military member and is on covered active duty; or
7. To care for a covered servicemember under the terms set forth in FMLA.

### **Notices**

Required notices shall be posted by the District so that employees are aware of their rights and responsibilities when the need for family or medical leave arises.

All requests for family and medical leave shall be made in writing on a District form. The employee shall provide sufficient information to determine whether the leave qualifies for FMLA and/or AFLA leave.

The employee is required to provide advance notice, consistent with these laws, and leave may be denied if notice requirements are not met. The employee must ordinarily provide 30 days advance notice when the leave is foreseeable.

## **Concurrent Use of Paid Leave**

**Note:** *Both FMLA and AFLA are unpaid leaves. However, these laws permit employees and employers to substitute paid leave for unpaid leave. The policy language below requires employees to use all applicable paid leave in conjunction with FMLA/AFLA leave. If such a policy is not adopted, an employee may take his or her full entitlement of FMLA/AFLA leave, and then take any additional paid leave to which he or she is entitled. The policy helps minimize cumulative absences from work.*

FMLA and AFLA are unpaid leaves. However, the District has elected to require employees to substitute paid leave for unpaid leave taken for an FMLA or AFLA qualifying event. Paid leave substitutions will include personal leave and annual leave; and sick leave if the employee requests leave because of the employee's own serious health condition or for another event for which sick leave may be used under District policies or negotiated agreements.

An employee's FMLA or AFLA leave runs concurrently with other types of paid leave and the District will give proper notice to the employee that FMLA or AFLA leave is being utilized. The substitution of paid leave for unpaid leave does not extend the maximum FMLA or AFLA leave period. When paid leave is exhausted, the remaining absences will continue to be FMLA or AFLA leave, as applicable, but will be unpaid.

*(cf. 4161.1 – Sick Leave)*

*(cf. 4161.2 – Personal Leaves)*

## **Medical Certification and Fitness for Duty**

The District requires medical certification and recertification of any serious health condition of the employee or qualifying family member. Failure to provide timely certification when requested will result in denial of leave.

Employees on FMLA or AFLA leave must periodically report on their status and intent to return to work.

Employees are required to provide a fitness-for-duty certificate upon returning from FMLA or AFLA leave when the leave is taken because of the employee's own serious health condition.

## **“Calendar Year” for Purposes of Leave Entitlement**

**Note:** *FMLA allows employers to choose their calendar year for determining the amount of leave to which an eligible employee is entitled. This can include the actual calendar year, the District's fiscal year, or a rolling calendar year. The rolling calendar year is recommended as it allows the employer to look back and eliminate the potential for employees to stack FMLA leave entitlements between two calendar years.*

For purposes of determining total leave availability for an eligible employee, the District utilizes a rolling twelve-month period measured backwards from the date leave is used, to avoid stacking of back-to-back leave entitlements.

### **Intermittent Leave**

An employee will be denied intermittent leave or leave on a reduced leave schedule to care for an immediate family member with a serious health condition, or for the employee's own serious health condition, when the employee fails to establish, through medical certification, that there is a medical need for such leave, as distinguished from voluntary treatments and procedures, and/or the employee has failed to establish, through medical certification, that it is medically necessary for the leave to be taken intermittently on a reduced leave schedule.

### **Instructional Employees**

Both the District, and its instructional employees, will comply with the special rules for instructional employees set forth in law. These rules shall be included in the regulations developed by the Superintendent.

### **Job Benefits and Protection**

**Note:** *For the duration of FMLA leave, the employer must maintain the employee's health coverage under any group plan. There is a similar requirement under AFLA, except that school districts can require the employee to pay the full costs of coverage during periods of unpaid AFLA leave. For periods when the employee is concurrently on paid leave, health coverage requirements would apply consistent with what is provided to district employees on paid leave.*

To the extent required by law, the District will maintain the employee's health coverage under any group plan. The employee will be required to continue making employee contributions as required by the plan. An employee who fails to return to work after expiration of his or her available leave may be required to reimburse the District for those benefits paid, as allowable by law.

The District will restore a returning employee to his or her original or an equivalent position, with equivalent pay, benefits, and other employment terms, unless restoration is not required by law. The employee will not lose any employment benefit that accrued prior to the start of the employee's leave.

The District will not interfere with, restrain, or deny to a qualifying employee any right provided by FMLA or AFLA. Nor will the District discriminate or retaliate against any person for utilizing leave, enforcing leave rights, or opposing any practice made unlawful by FMLA or AFLA, or for being involved in any proceeding related to these laws.

(cf. 0410 – Nondiscrimination in District Programs & Activities)

(cf. 4030 – Nondiscrimination in Employment)

## **No Alternative Employment**

**Note:** *Having a second job while on FMLA or AFLA leave does not violate these laws. However, employers may have and enforce a policy prohibiting its employees from outside work while on leave from the District.*

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. Upon written request by the employee, the Superintendent may, in his or her sole discretion, grant an exception to this provision.

## **Enforcement of Rights**

**Employees who believe their rights** under FMLA or AFLA have been violated are encouraged to bring this to the attention of the Superintendent or designee for investigation and resolution. Any employee may file a complaint with the U.S. Department of Labor for violations of FMLA, or the Alaska Department of Labor for violations of AFLA. An eligible employee may bring a civil action against an employer for violations.

The District reserves the right to take disciplinary action, up to and including termination, against any employee who abuses the rights, duties, and obligations of FMLA or AFLA.

Legal References:

### ALASKA STATUTES

[30.20.500-.550](#) Alaska Family Leave Act

### UNITED STATES CODE

Family and Medical Leave, [29 U.S.C. 2601](#), *et seq.*

Family and Medical Leave Act of 1993, [29 C.F.R. 825.100-825.702](#) (Amend 2013)

9/92

Revised 3/2013

## **Nome Public Schools**