

*****407 – Family Medical Leave Act (FMLA).** This policy is updated to include language relating to an intermittent or reduced leave schedule for employees who take FMLA, including special rules for instructional employees. The schedule provides guidelines for FMLA leave taken at specific periods during the school year. (See 29 USC § 2611). Although the intermittent and reduced leave schedule language is new to this policy, such regulations do not reflect amended federal regulations.

All eligible employees of this district may take leave as provided by the Family and Medical Leave Act (FMLA). The FMLA entitles eligible employees to take up to twelve (12) weeks of unpaid, job-protected leave during a twelve-month (12-month) period for specified family and medical reasons.

DEFINITIONS

“Child” includes biological, adopted, or foster child, stepchild, legal ward, or a child of a person standing *in loco parentis* (in place of parent). The child must be either under 18 years of age or, if over 18, incapable of self-care because of a mental or physical disability, or be a covered servicemember.

“Continued treatment” includes:

1. Any consecutive three (3)-day period of incapacity that involves: (a) at least two (2) visits to a health care provider, or (b) a regimen of continued treatment under a health care provider’s supervision;
2. Any period of incapacity due to pregnancy (including severe morning sickness), even if no treatment is obtained for prenatal care;
3. Any period of incapacity due to a chronic medical condition, such as asthma, diabetes, or epilepsy, even if no treatment is obtained;
4. Any period of absence to receive multiple treatments for restorative surgery or a serious illness such as cancer, severe arthritis, or kidney disease; or
5. Any permanent or long-term incapacity (e.g., Alzheimer’s or severe stroke), even if no treatment is being provided.

“Covered active duty” means:

1. For members of the regular Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; or

2. For members of the reserve components of the Armed Forces (members of the National Guard and Reserves), duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.

“Covered service member” means either:

1. A current member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list, for a serious injury or illness.
2. A veteran of the Armed Forces (including the National Guard or Reserves) discharged within the five-year period before the family member first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of a covered servicemember.

“*In loco parentis*” means a person who provides day-to-day care or financial support for a child. Employees with no biological or legal relationship to a child can stand *in loco parentis* to that child, and are entitled to FMLA leave; e.g., an uncle who cares for his sister’s children while she serves on active military duty.

“Next of kin” is the nearest blood relative, other than the current servicemember’s spouse, parent, son, or daughter, in the following order of priority: (1) a blood relative who has been designated in writing by the servicemember as the next of kin for FMLA purposes, (2) a blood relative who has been granted legal custody of the servicemember, (3) brothers and sisters, (4) grandparents, (5) aunts and uncles, and (6) first cousins.

“Parent” includes a biological parent (not parent-in-law) or someone who stood *in loco parentis* when the employee was a child.

“Spouse” is a husband or wife, including a common-law or same-sex husband or wife, but does not include a “significant other” or “domestic partner.”

“Serious health condition” is a condition that involves either an overnight stay in a medical care facility or “continued treatment” by a health care provider for a condition that either prevents the employee from performing the functions of the employee’s job.

“Teacher (or instructional employee)”, for the purposes of this policy, means an employee employed principally in an instructional capacity by the district whose primary function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actually teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily non-instructional employees.

ELIGIBLE EMPLOYEE

An eligible employee is defined as an individual who:

1. Has been employed by the district for at least twelve (12) months (need not be consecutive months of employment); and
2. Has been employed for at least one thousand two hundred fifty (1,250) hours of service during the twelve-month (12-month) period immediately preceding the commencement of the leave*; and
3. Is employed at a worksite where fifty (50) or more employees are employed by the district within seventy-five (75) miles of the worksite.

*Full-time teachers are presumed to be eligible for FMLA leave, unless the district can clearly demonstrate that the teacher did not work 1,250 hours during the previous twelve (12) months.

The district must choose one of the following options to determine the calculation of the 12-week period of leave within a 12-month period:

OPTION A

For the purpose of determining continuing eligibility for FMLA, this district will calculate the “twelve-month (12-month) period immediately preceding the commencement of the leave” as the calendar year.

OPTION B

For the purpose of determining continuing eligibility for FMLA, this district will calculate the “twelve-month (12-month) period immediately preceding the commencement of the leave” as the fiscal year beginning July 1 of each year.

OPTION C

For the purpose of determining continuing eligibility for FMLA, this district will calculate the “twelve-month (12-month) period immediately preceding the commencement of the leave” as the 12-month period measured forward from the date an employee first takes FMLA leave.

□ OPTION D

For the purpose of determining continuing eligibility for FMLA, this district will calculate the “twelve-month (12-month) period immediately preceding the commencement of the leave” as a rolling 12-month period measured backward from the date an employee uses any FMLA leave

LEAVE ENTITLEMENT

Eligible employees are entitled to up to twelve (12) workweeks of unpaid, job-protected leave in a twelve-month (12-month) period for one (1) or more of the following reasons:

1. The birth of a child and to care for the newborn child within one (1) year of birth*;
2. The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one (1) year of placement*;
3. To provide care for the employee’s spouse, child, or parent, who has a serious health condition; or
4. For a serious health condition that makes the employee unable to perform the employee’s job.
5. For any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a military member on covered active duty or has been notified of an impending call or order to covered active duty.

*If the district employs both spouses to whom this provision applies, the husband and wife are limited to a total of twelve (12) workweeks during the twelve-month (12-month) period, which can be divided any way they choose and can be overlapping. Both parents are eligible to take their remaining weeks of FMLA leave for another FMLA-qualifying purpose, including but not limited to, a serious health condition of the child, or to recover from a C-section or other birth complications.

MILITARY CAREGIVER LEAVE

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember is entitled to a total of twenty-six (26) workweeks of leave during a twelve-month (12-month) period to care for the servicemember who is recovering from a serious illness or injury sustained in or aggravated by service in the line of duty while on active duty in the Armed Forces. The servicemember must either be currently in the Armed Forces and unable to perform regular duties, or was in the Armed Forces and was discharged under other than dishonorable conditions within five (5) years of receiving the medical treatment, recuperation or therapy prompting the employee's leave request. Such leave shall only be available during a single twelve-month (12-month) period.

During the single twelve-month (12-month) period, an eligible employee shall be entitled to a combined total of twenty-six (26) workweeks of leave, including the twelve (12) weeks for a “qualified exigency.” However, there is no limitation on the availability of leave during any other twelve-month (12-month) period. If the district employs both spouses to whom this section applies, the husband and wife are limited to a total of twenty-six (26) workweeks during the twelve-month (12-month) period for all types of FMLA leave.

REQUESTING LEAVE

Employees must comply with the district’s usual and customary requirements for requesting leave and provide enough information for the district to reasonably determine whether the FMLA may apply to the leave request. Employees generally must request leave thirty (30) days in advance when the need for leave is foreseeable. When the need for leave is foreseeable less than thirty (30) days in advance or is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances.

When an employee seeks leave for a FMLA-qualifying reason for the first time, the employee need not expressly assert FMLA rights or even mention the FMLA. If an employee later requests additional leave for the same qualifying condition, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave.

USE OF ACCRUED PAID LEAVE

Once it has been determined that the leave is for an FMLA-qualifying reason, any accrued paid leave, such as sick or vacation leave, used by an employee for absences which qualify for FMLA coverage will be counted as FMLA leave, unless the district determines otherwise.

INTERMITTENT OR REDUCED LEAVE SCHEDULE

The district will comply with the mandates of FMLA, including any special rules which may apply regarding the taking of intermittent leave or leave on a reduced leave schedule, or leave near the end of an academic term by instructional employees. Intermittent leave means to take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment; or to transfer temporarily to an available alternative position offered by the employeemployere for which the employee is qualified that has equivalent pay and benefits and better accommodates recurring periods of leave than the regular employment position of the employee. The district will consider requests by employees for intermittent leave or leave on a reduced leave schedule on a case-by-case basis.

LEAVE DURING PERIODS NEAR THE CONCLUSION OF THE ACADEMIC TERM

The following special rules apply with respect to periods of leave near the conclusion of an academic term in the case of any eligible employee employed principally in an instructional capacity by the district or school:

1. Leave more than five (5) weeks prior to end of term. If the eligible employee begins leave more than five (5) weeks prior to the end of the academic term, the district or school may require the employee to continue taking leave until the end of the term if the leave is at least three (3) weeks in duration and the return to employment would occur during the 3-week period of the term.
2. Leave less than five (5) weeks prior to end of term. If the eligible employee begins leave less than five (5) weeks prior to the end of the academic term, the district or school may require the employee to continue taking leave until the end of the term if the leave is of greater than two (2) weeks duration and the return to employment would occur during the 2-week period before the end of the term.
3. Leave less than three (3) weeks prior to end of term. If the eligible employee begins leave less than three (3) weeks prior to the end of the academic term and the duration of the leave is greater than five (5) working days, the district or school may require the employee to continue to take leave until the end of the term.

HEALTH INSURANCE COVERAGE

The district will continue group health insurance coverage for an employee on FMLA leave under the same terms and conditions as if the employee had not taken leave and will provide any necessary notice of termination of such insurance coverage due to the employee's failure to pay his/her portion of the premium or the employee's request for termination of coverage. Such notice will be provided at least fifteen (15) days prior to the termination of coverage.

CERTIFICATION

When an employee requests FMLA leave due to his or her own serious health condition or a covered family member's serious health condition the district may require certification in support of the leave from a health care provider. The district may also require periodic recertification of a serious health condition.

JOB RESTORATION

Upon return from FMLA leave, the employee will be restored to his or her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee's use of FMLA leave will not be counted against the employee under a "no-fault" attendance policy.

NOTICE

This district will post a notice approved by the U.S. Secretary of Labor explaining the rights and responsibilities under the FMLA at the district offices.



LEGAL REFERENCE:

Family and Medical Leave Act of 1993

29 USC § 2611

29 USC § 2654

29 CFR §§ 825.600 – 825.604

Idaho Code Section 33-1216 – Sick and Other Leave

ADOPTED: August 28, 2002

AMENDED: August 15, 2007, October 7, 2009, January 28, 2015, August 2018

ATTACHMENTS:

Employee Rights and Responsibilities under the Family and Medical Leave Act

**Language in text set forth in italics is optional.*