

# DRAFT UPDATE

Mid-Valley Special Education Cooperative

5:185

## General Personnel

### Family and Medical Leave

#### Leave Description

An eligible employee may use unpaid family and medical leave (FMLA leave), guaranteed by the federal Family and Medical Leave Act, for up to a combined total of 12 weeks each year, beginning July 1 and ending June 30 of the next year. The U.S. Department of Labor's rules (federal rules) implementing FMLA, as they may be amended from time to time, control FMLA leave.

An eligible employee may take FMLA leave for up to a combined total of 12 weeks each year, beginning July 1 and ending June 30 of the next year.

During a single 12-month period, an eligible employee's FMLA leave entitlement may be extended to a total of 26 weeks of unpaid leave to care for a covered servicemember (defined herein in the federal rules) with a serious injury or illness. The "single 12-month period" is measured forward from the date the employee's first FMLA leave to care for the covered servicemember begins.

While FMLA leave is normally unpaid, the Cooperative will substitute an employee's accrued compensatory time-off and/or paid leave for unpaid FMLA leave. All policies and rules regarding the use of paid leave apply when paid leave is substituted for unpaid FMLA leave. Any substitution of paid leave for unpaid FMLA leave will count against the employee's FMLA leave entitlement. Use of FMLA leave shall not preclude the use of other applicable unpaid leave that will extend the employee's leave beyond 12 weeks, provided that the use of FMLA leave shall not serve to extend such other unpaid leave. Any full workweek period during which the employee would not have been required to work, including summer break, winter break and spring break, is not counted against the employee's FMLA leave entitlement.

FMLA leave is available in one or more of the following instances:

1. The birth and first-year care of a son or daughter.
2. The adoption or foster placement of a son or daughter, including absences from work that are necessary for the adoption or foster care to proceed and expiring at the end of the 12-month period beginning on the placement date.
3. The serious health condition of an employee's spouse, child, or parent.
4. The employee's own serious health condition that makes the employee unable to perform the functions of his or her job.
5. The existence of a qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to active duty, as provided in federal rules.) in support of a contingency operation. A "covered military member" must be either a member of a Reserve component or a retired member of the regular Armed Forces or Reserve. "Qualifying exigencies" exist in the following categories: short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, rest and recuperation, post-deployment activities, and additional activities as provided in the FMLA regulations.
6. To care for the employee's spouse, child, parent, or next of kin who is a covered servicemember with a serious injury or illness, as provided by federal rules. A "covered servicemember" is a member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty for which

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**Comment [AP1]:** A sentence was added regarding an employee's ability to use unpaid family and medical leave. The U.S. Department of Labor, Wage & Hour Division, has a helpful website containing forms, compliance posters, etc. ([www.dol.gov/weld/fmla](http://www.dol.gov/weld/fmla)).

Issue 87, October 2014

**Comment [AP2]:** CAUTION: Please review policy language to assure the 12-month period listed aligns with District practice and all Collective Bargaining Agreements. If necessary, please include edits with your Response Form.

Issue 87, October 2014

**Comment [AP3]:** Multiple definitions throughout the policy are replaced by references to the "federal rules." The recent amendments to the federal rules have made the definitions too lengthy to restate in the policy.

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~~he or she is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list~~

If spouses are employed by the Cooperative, they may together take only 12-weeks for FMLA leaves when the reason for the leave is 1 or 2, above, or to care for a parent with a serious health condition, or a combined total of 26 weeks for item 6 above.

An employee may be permitted to work on an intermittent or reduced-leave schedule in accordance with ~~FMLA regulations; federal rules.~~

## Eligibility

To be eligible for FMLA leave, an employee must be employed at a worksite where at least 50 employees are employed within 75 miles and the employee has been employed by the Cooperative for at least 12 months and has been employed for at least 1,250 hours of service during the 12-month period immediately before the beginning of the leave. The 12 months an employee must have been employed by the Cooperative need not be consecutive. However, the Cooperative will not consider any period of previous employment that occurred more than 7 years before the date of the most recent hiring, except when the service break is due to National Guard or Reserve military service or when a written agreement exists concerning the Cooperative's intention to rehire the employee.

## Requesting Leave

If the need for the FMLA leave is foreseeable, an employee must provide the Executive Director or designee with at least 30 days' advance notice before the leave is to begin. If 30 days' advance notice is not practicable, the notice must be given as soon as practicable. The employee shall make a reasonable effort to schedule a planned medical treatment so as not to disrupt the Cooperative's operations, subject to the approval of the health care provider administering the treatment. The employee shall provide at least verbal notice sufficient to make the Executive Director or designee aware that he or she needs FMLA leave, and the anticipated timing and duration of the leave. Failure to give the required notice for a foreseeable leave may result in a delay in granting the requested leave until at least 30 days after the date the employee provides notice.

## Certification

~~Executive Director~~

Within 15 calendar days after the Superintendent or designee makes a request for certification for a FMLA leave, an employee must provide one of the following:

1. When the leave is to care for the employee's covered family member with a serious health condition, the employee must provide a complete and sufficient certificate ~~completed~~signed by the family member's health care provider.
2. When the leave is due to the employee's own serious health condition, the employee must provide a complete and sufficient certificate ~~completed~~signed by the employee's health care provider.
3. When the leave is to care for a covered servicemember with a serious illness or injury, the employee must provide a complete and sufficient certificate ~~completed~~signed by an authorized health care provider for the covered servicemember.
4. When the leave is because of a qualified exigency, the employee must provide: (a) a copy of the covered military member's active duty orders or other documentation issued by the military indicating that the military member is on active duty or call to active duty status, in support of a contingency operation and the dates of the covered military member's active duty service, and (b) a statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested.

The Cooperative may require an employee to obtain a second and third opinion at its expense when it has reason to doubt the validity of a medical certification.

Comment [AP4]: In accordance with the revised federal rules, the Certification section now requires certificates to be "complete and sufficient" and signed by the individual identified in the policy.

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The Cooperative may require recertification at reasonable intervals, but not more often than once every 30 days. Regardless of the length of time since the last request, the Cooperative may request recertification when the, (1) employee requests a leave extension, (2) circumstances described by the original certification change significantly, or (3) Cooperative receives information that casts doubt upon the continuing validity of the original certification. Recertification is at the employee's expense and must be provided to the Cooperative within 15 calendar days after the request. The Cooperative may request recertification every 6 months in connection with any absence by an employee needing an intermittent or reduced schedule leave for conditions with a duration in excess of 6 months.

Failure to furnish a complete and sufficient certification on forms provided by the Cooperative may result in a denial of the leave request.

## Continuation of Health Benefits

During FMLA leave, employees are entitled to continuation of health benefits that would have been provided if they were working. Any share of health plan premiums being paid by the employee before taking the leave, must continue to be paid by the employee during the FMLA leave. A Cooperative's obligation to maintain health insurance coverage ceases if an employee's premium payment is more than 30 days late and the Cooperative notifies the employee at least 15 days before coverage will cease.

## Changed Circumstances and Intent to Return

An employee must provide the Executive Director or designee reasonable notice of changed circumstances (i.e., within 2 business days if the changed circumstances are foreseeable) that will alter the duration of the FMLA leave. The Executive Director or designee, taking into consideration all of the relevant facts and circumstances related to an individual's leave situation, may ask an employee who has been on FMLA leave for 8 consecutive weeks whether he or she intends to return to work.

## Return to Work

If returning from FMLA leave occasioned by the employee's own serious health condition, the employee is required to obtain and present certification from the employee's health care provider that he or she is able to resume work.

An employee returning from FMLA leave will be given an equivalent position to his or her position before the leave, subject to: (1) permissible limitations the Cooperative may impose as provided in the FMLA or implementing regulations, and (2) the Cooperative's reassignment policies and practices.

Classroom teachers may be required to wait to return to work until the next semester in certain situations as provided by the FMLA regulations.

## Implementation

The Executive Director or designee shall ensure that: (1) all required notices and responses to leave requests are provided to employees in accordance with the FMLA; and (2) this policy is implemented in accordance with the FMLA. In the event of a conflict between the policy and the FMLA or its regulations, the latter shall control. The terms used in this policy shall be defined as in the FMLA regulations.

**Please also refer to the following current Agreements:**

**Professional Agreement between Mid-Valley Special Education Cooperative and Mid-Valley Special Education Association (MSVEA).**

**Professional Agreement between Mid-Valley Special Education Cooperative and Therapy Association for Special Children (TASC).**

# ***DRAFT UPDATE***

LEGAL REF.: Family and Medical Leave Act, 29 U.S.C. §2601 et seq., 29 C.F.R. Part 825.

CROSS REF.: 5:180 (Temporary Illness or Temporary Incapacity), 5:250 (Leaves of Absence),  
5:310 (Compensatory Time-Off), 5:330 (Sick Days, Vacation, Holidays, and  
Leaves)

ADOPTED: April 4, 2012