

PERSONNEL SERVICES

Regulation 4321
(Form 4321)

Absences, Leave and Vacation

Family and Medical Leave

A. ELIGIBLE EMPLOYEES

Employees eligible for family and medical leave must:

1. Have been employed for a total of at least twelve (12) months (not necessarily consecutive); and
2. Have worked at least 1,250 hours during the twelve (12) months immediately preceding the commencement of the leave (for noninstructional staff and part-time instructional staff), or have been considered full-time (for instructional employees); and
3. Be employed at a work-site where the employer employs at least fifty (50) employees within a 75-mile radius.

All periods of absence from work due to or necessitated by USERRA-covered service is counted in determining the employee's eligibility for FMLA leave.

B. QUALIFYING REASONS FOR LEAVE

An eligible employee may take unpaid leave for the following reasons:

1. The birth of the employee's child (leave must be concluded within one (1) year of the date of birth).
2. The placement of a child with the employee for adoption, or foster care when foster placement is pursuant to State action (leave must be concluded within one (1) year of the date of placement).
3. The care of the employee's child (including biological, adopted, or foster child, stepchild, legal ward, or child of a person standing in loco parentis, who is either under age 18, or age 18 or older and is incapable of self-care because of mental or physical disability), spouse or parent (including a person who stood in loco parentis to the employee when the employee was a child -- but not parent "in-law"), who has a serious health condition.
4. The serious health condition of the employee that makes the employee unable to perform the essential functions of the employee's position.
5. Any qualifying exigency arising out of the fact 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 active duty) requiring deployment to a foreign country in support of a

contingency operation. Such leave may include Rest and Recuperation leave up to a maximum of 15 (15) calendar days.

6. Any qualifying exigency arising out of a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty.
7. The care for a covered servicemember with a serious injury or illness, if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

C. DEFINITIONS

1. Serious Health Condition - An illness, injury, impairment, or physical or mental condition that involves the following:

a. **Inpatient Care:** Inpatient care (overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care.

b. **Continuing Treatment:** Continuing treatment by a health care provider, including the following:

i. *Incapacity and Treatment:* A period of incapacity of more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:

1. Treatment two or more times, within 30 days of the first day of incapacity, by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services under order of, or on referral by, a health care provider; or

2. Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of a health care provider. The in-person treatment visit must take place within seven days of the first day of incapacity.

ii. *Pregnancy or Prenatal Care:* Any period of incapacity due to pregnancy, or for prenatal care (even if the absence does not last more than three days and the employee or family member does not receive treatment from a health care provider during the absence);

iii. *Chronic Conditions:* Any period of incapacity or treatment for such incapacity due to a chronic serious health condition (even if the absence does not last more than three days and the employee or family member does not receive treatment from a health care provider during the absence). A chronic serious health condition is one which:

1. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
2. Continues over an extended period of time (including recurring episodes of a single underlying condition);
3. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

iv. *Permanent or Long-Term Conditions:* A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

v. *Multiple Treatments:* Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other 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 (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

c. **Exceptions:** Unless complications develop, a Serious Health Condition **does not** include cosmetic treatments, such as most treatments for acne or plastic surgery, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc. Treatment for substance abuse by a health care provider or on referral by a health care provider may be a serious health condition if the conditions of this policy are met. Absence due to use of the substance, rather than for treatment, does not qualify for FMLA leave.

d. **Current Servicemember:** A serious injury or illness for a current servicemember includes any illness or injury that existed before the beginning of the member's active duty and which was aggravated by service in the line of duty on active duty in the Armed Forces.

e. **Covered Veteran:** A serious injury or illness is one that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran and is:

- i. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces

- and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or
- ii. A physical or mental condition for which the covered veteran has received a VA Service Rated Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or
- iii. A physical or mental condition that substantially impairs the veteran's ability to secure or follow substantially gainful occupation by reason of a disability or disabilities related to military service or would so absent treatment; or
- iv. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

2. Treatment - examinations to determine if a serious health condition exists and evaluations of the condition. "Treatment" does not include routine physical, eye, or dental examinations.

3. Health Care Provider - includes doctors of medicine or osteopathy, podiatrists, dentists, clinical psychologists, optometrists, chiropractors (for limited purposes), nurse practitioners, nurse-midwives, clinical social workers, so long as they are licensed (if required by state law) and are performing within the scope of their practice as defined under state law; Christian Science practitioners listed with the First Church of Christ, Scientist, Boston, Massachusetts; any health care provider from whom an employer or a group health plan's benefit manager will accept certification to substantiate a claim for benefits; a health care provider as defined above who practices in a country other than the United States and is licensed in accordance with the laws of that country.

4. Regimen of continuing treatment - A course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. A "regimen of continuing treatment" that includes the taking of over-the-counter medications such as aspirins, antihistamines, or salves, or bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

5. Qualifying Exigency – One of the following activities or conditions, occurring while the employee's spouse, son, daughter, or parent is on active duty in a foreign country or call to active duty status in the National Guard or Reserves:

- a. Short-notice deployment - notice is received seven days or less from date of deployment;
- b. Military events and related activities;
- c. Childcare and school activities - arranging for alternatives or changed circumstances;
- d. Financial and legal arrangements;
- e. Counseling;
- f. Rest and recuperation – during period of deployment;

- g. Post-deployment activities; and
- h. Additional activities agreed upon by the employer and employee.

6. Covered Servicemembers – Any **current** member of the Armed Forces, including the National Guard or Reserves and any covered veteran undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

7. Covered Veteran – 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.

8. Instructional employee - A person employed principally in an instructional capacity, whose principal 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 aids who do not have as their principal function actual teaching or instructing, or auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

D. LENGTH OF LEAVE

1. General Rule: An eligible employee is entitled to up to twelve (12) workweeks of unpaid leave within a twelve-month period without loss of seniority or benefits. When both spouses in a family work for the District, they will be entitled to a total of twelve (12) weeks of unpaid leave (rather than 12 weeks each) for the birth, adoption, or foster placement of a child, or to care for a parent with a serious health condition.

- The amount of leave available to an employee at any given time will be calculated by using a “rolling” 12 month period measured backward from the date an employee uses any FMLA leave.
- All leave taken under the policy and leave for any other reason that would qualify under FMLA (e.g., worker's compensation leave that qualifies as a serious health condition), will be counted against the employee's leave entitlement under FMLA. Employees will be required to run all FMLA leave concurrently with other leaves available to the employee.
- When an employee is not required to report for work for one or more weeks (e.g., instructional employees who do not report for work during Christmas/New Year holiday, or during the summer), such days will not count against the employee's FMLA leave.

2. Care of Covered Servicemembers Leave: An eligible employee is entitled to 26 workweeks of leave to care for a covered servicemember with a serious injury or illness during a single twelve-month period, which begins on the first day the eligible employee requests this type of FMLA leave. The employee may take leave to care for a covered

servicemember and leave for one of the other FMLA-qualifying reasons; however, in no event may an employee take more than 26 weeks of leave in a single twelve-month period.

3. Instructional Employees - End of Term Exceptions:

a. If an instructional employee seeks leave for any purpose, including the employee's own serious health condition, of at least three (3) weeks in duration and the requested leave would begin more than five (5) weeks prior to the end of the academic term (school semester), the District may require the employee to continue taking leave until the end of the school term, if the instructional staff member's return to employment would otherwise occur during the three (3) week period before the end of such term.

b. If the instructional employee seeks leave for any purpose other than the employee's own serious health condition, less than five (5) weeks prior to the end of the academic term, the District may require the staff member to continue taking leave to the end of the term, if the leave is greater than two (2) weeks in duration and the return to employment would occur within two (2) weeks prior to the end of the term.

c. If the instructional employee takes leave for any purpose other than the employee's own serious health condition, within three (3) weeks prior to the end of the term, and duration of the leave is greater than five (5) days, the District may require the staff member to continue the leave until the end of the term.

- When an employee is required to take leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement.

E. COORDINATION WITH EXISTING LEAVE POLICIES

During a leave related to the employee's serious health condition, the employee shall exhaust all available paid sick leave, personal leave or vacation before continuing such leave on an unpaid basis.

During a family or medical leave provided under this regulation for all other FMLA-qualifying leave, an employee shall first exhaust all unused vacation or personal days before continuing such leave on an unpaid basis.

At the conclusion of any FMLA leave, an employee may elect to extend leave pursuant to the provision of other Board policies and regulations governing extended leave, so long as the employee is eligible for extended leave under such other policy or regulation. The amount of time taken for FMLA leave will be deducted from the period of leave available under other extended leave policies. Once the FMLA portion of the employee's leave has ended, and the employee has elected to continue on leave pursuant to another Board policy or regulation, the remaining portion of the leave will be governed by the provisions of the other policy or

regulation with respect to compensation, benefits, reinstatement, and all other terms and conditions of employment as set forth in the other policy or regulation.

F. CERTIFICATION

The District shall retain the right to request a certification of the FMLA-qualifying need for leave from any employee making such a request. The procedure for providing such certification shall be as follows:

1. **Serious Health Condition** – When an employee requests a leave of absence for a FMLA-qualifying reason, the employee must submit to the Superintendent/designee, a written medical certification form (available in the Superintendent/designee's office). When the leave is for the employee's own serious health condition and District provides a list of the employee's essential job functions, the employee's health care provider must certify the employee is unable to perform an essential function of the employee's job.

a. **Timing** – Upon receipt from the District, an employee has fifteen calendar days to return a complete and sufficient certification of the serious health condition. If the certification is incomplete or insufficient, as determined by the Superintendent/designee, the District shall state in writing the nature of the deficiency and grant the employee seven additional calendar days to provide the District with a complete and sufficient certification. Failure to provide such certification within the specified time period may result in denial or delay of leave.

b. **Who May Contact Health Care Provider** – In the event the District determines an employee's certification remains either incomplete or insufficient, after the employee has been notified of any deficiencies and been granted time to correct such deficiencies, the following individuals will be authorized to contact the employee's health care provider:

- i. The District's own health care provider;
- ii. Human resources professional;
- iii. Leave administrator; or
- iv. Administration official.

Under no circumstances will the employee's direct supervisor be permitted to contact the employee's health care provider to certify the employee's health condition. Should an employee deny the District the ability to communicate with the health care provider regarding an incomplete or insufficient certification, the employee will be denied FMLA leave.

c. **Second/Third Opinion** - The District reserves the right to require an employee receive a second (and possibly a third) opinion from another health care provider (at the District's expense) certifying the serious health condition of the employee or family member. Further, second and third opinions may be required for military caregiver leave certifications that are

completed by health care providers, as defined in Section 825.125 of the FMLA, who are not affiliated with DOD, VA or TRICARE.

d. **Fitness for Duty** - Before returning to work, an employee who is on leave for the employee's own serious health condition, must submit to the Superintendent/designee a health care provider's written certification form that the employee is able to perform the essential functions of the employee's job. The process for verifying the employee's fitness to return to duty shall be the same as for the initial certification set out above. Failure to provide a complete and sufficient fitness for duty certification may result in the delay or denial of job restoration.

e. **Recertification** - During the employee's leave, the District may periodically seek a recertification, no less than once every thirty days, unless the duration of the leave is known to be longer, in which case the District will not seek recertification until the end of the known duration of FMLA leave. The general rule has three exceptions, which permit the District to immediately seek a recertification from the employee. These exceptions include the following: 1) the employee requests a leave extension; 2) the circumstances necessitating leave change; or 3) the District received information disputing the validity of an earlier certification.

f. **Intent to Return to Work** – The District may require an employee to periodically report on the employee's intent to return to work.

g. **Family Relationship** - Employees requesting FMLA-qualifying leave related to a family member may be requested to provide reasonable documentation of the family relationship.

2. Qualifying Exigency – The District may require an employee to provide it with a copy of the covered military member's active duty orders in support of a contingency operation, prior to permitting FMLA leave for a qualifying exigency. The District may also require the employee to certify, with reference to appropriate facts, that the reason for taking FMLA leave is permissible as it is one of the eight enumerated basis for taking qualifying exigency leave, as stated above. The process for any such certification shall adhere to the procedure outlined for serious health conditions, listed above. For Rest and Recuperation leave, the District may require a copy of the military member's Rest and Relaxation leave orders, or other documentation issued by the military setting forth the dates of the military member's leave.

3. Care for Covered Servicemembers – The District may require certification completed by the covered servicemember's health care provider prior to permitting an employee to use FMLA for the care of a covered servicemember. In addition to certifying the authenticity of the covered servicemember's serious injury or illness, any certification must also identify the injury or illness as occurring in the line of duty while on active duty. The process for any such certification shall adhere to the procedure outlined for serious health conditions, listed above.

4. Care for Military Caregiver – The District may require a Certification of Military Caregiver Leave, to be completed by a Department of Defense (DOD) health care provider, a U.S. Department of Veterans Affairs (VA) health care provider, a DOD TRICARE network authorized private health care provider, a DOD non-network

TRICARE authorized health care provider or a health care provider, as defined in Section 825.125 of the FMLA who are not affiliated with DOD, VA or TRICARE. If the District requests certification, an employee may submit documentation of enrollment in the VA Program of Comprehensive Assistance for Family Caregivers as sufficient certification of the covered veteran's serious injury or illness. The documentation will be deemed sufficient even if the employee is not the named caregiver on the document. However, if the employee submits the documentation of the servicemember's enrollment in the VA Program of Comprehensive Assistance for Family Caregivers, the District may require the employee to provide additional information, such as confirmation of the familial relationship to the enrolled servicemember or documentation of the veteran's discharge date and status.

5. Possibility of Waiver of Certification – The District, at its sole discretion, may waive the certification requirements set forth in this Regulation, as the circumstances of each FMLA-leave request may permit. Under no circumstances shall the District's exercise of its discretion be interpreted or construed as a permanent waiver of the certification requirements, but such requirements shall remain in full force and effect unless and until the District specifically modifies or eliminates this Regulation.

G. INTERMITTENT OR REDUCED LEAVE

1. Birth or Placement - Leave taken under this policy for the birth of a child, the placement of a child for adoption or foster care, or to care for such child may be taken on an intermittent or reduced work schedule only with the approval of the Board of Education.

2. Non-Instructional Employees – FMLA leave, other than birth or placement of a child, may be taken on an intermittent or reduced-schedule basis when medically necessary. If an employee seeks leave on an intermittent or reduced-schedule basis, the employee must submit medical certification, as discussed above, and additional certification from a health care provider, that the intermittent or reduced-schedule leave is medically necessary.

- The District may require an employee taking intermittent or reduced-schedule leave to transfer temporarily to an alternative available position for which the employee is qualified or may modify the employee's current position to better accommodate the employee's recurring periods of leave.
- Whenever the need for the FMLA leave is reasonably foreseeable, the employee must make a reasonable effort to schedule the treatment so that it is not unduly disruptive to District operations.

3. Instructional Employees - Leave taken because of the employee or family member's serious health condition may be taken on an intermittent or reduced-schedule basis when medically necessary. If an employee seeks leave on an intermittent or reduced-schedule basis, the employee must submit medical certification, as discussed above, and additional certification from a health care provider that the intermittent or reduced-schedule leave is medically necessary.

If an instructional employee requests intermittent leave to care for a family member or the employee's own serious health condition that is foreseeable based on planned medical treatment, and the employee would be on leave for more than twenty (20) percent of the total number of working days over the period of the leave, the District may require the employee to:

1. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
2. Transfer temporarily to an available position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

The employee must make a reasonable effort to schedule the treatment so that it is not unduly disruptive to District operations. The District will not require the employee to take more leave than is necessary to address the circumstances that precipitated the need for the leave, and will calculate time lost in the same method used to calculate other types of absences, at an increment of no more than one hour.

H. INSURANCE PREMIUMS

During an employee's family or medical leave of absence, the District will continue to provide health, life, vision, and dental insurance coverage for employees who are eligible for insurance benefits. Voluntary deductions (employee contributions) for (dependent) insurance for health/life/vision/dental (and employee disability and/or supplemental life insurance) must be paid in full each month and received by the twenty-fifth (25th) day of the month. Payments are to be submitted to the insurance office. Failure to make payments in a timely manner while on FMLA leave may result in the loss of any and all insurance coverage provided by the District to its employees. Employees should contact the District administrator responsible for coordinating insurance benefits regarding specific arrangements for making the required payments.

I. JOB RESTORATION

Upon return from FMLA-qualifying leave in accordance with this Regulation, the employee will be returned to the same or an equivalent position with no loss in benefits that accrued prior to the leave of absence. An employee who does not return to work at the end of an authorized leave may be subject to termination.

If an employee fails to return to work after the termination of the leave period, the District may recover health insurance premiums paid under the group plan during the leave period, except in certain circumstances (e.g., continuing serious health condition of employee or family member needing care, or other circumstances beyond control of employee). The District may recover any other insurance premiums (e.g., premiums for supplemental life insurance or for dependent coverage), submitted on behalf of the employee, for which the District has not been reimbursed, either upon the employee's return to work or the employee's failure to return after unpaid family or medical leave has ended.

J. NOTIFICATION

1. District Notification Procedure – The District shall provide its employees with notice of their rights and responsibilities under the FMLA through use of the following Notices:

- a. **General Notice** – A poster summarizing the FMLA entitlements shall be placed in an area accessible for employees and shall also be provided to each employee in the employee handbook.
- b. **Eligibility Notice** – This Notice shall state whether the employee qualifies to take FMLA leave.
- c. **Rights and Responsibilities Notice** – This Notice, issued in conjunction with the Eligibility Notice, will specify if a certification will be required from the employee, identify if paid leave will run together with the FMLA leave, address the procedure for making health insurance payments, the consequences of failing to make timely payments, and the employee's liability for repayment of health insurance premiums if the employee fails to return to work at the expiration of their FMLA leave. Finally, this Notice will explain the employee's right to return to the same or an equivalent job at the expiration of their FMLA leave. Both the Eligibility and Rights and Responsibilities Notices will be provided to all employees within five business days of when the District becomes aware of a potential FMLA situation.
- d. **Designation Notice** – Within five business days of the District's receipt of sufficient information from the employee to make a determination, the District shall provide the employee with the Designation Notice, which shall inform the employee if the leave shall be designated as FMLA leave. This Notice will designate the amount of leave counted against the employee's entitlement, specify if the FMLA leave will run concurrently with any accrued paid leave, and notify the employee if a fitness-for-duty exam will be required prior to returning to work.

2. Employee Notification Requirements – Absent unusual circumstances, all employees seeking FMLA leave must follow the District's customary call-in procedure for reporting absences. An employee who can reasonably foresee the need to take FMLA leave is required to notify the District of the date of commencement and the expected duration of the leave at least thirty days in advance of the leave, or if the need for the leave is not foreseeable, as soon as practicable. When the need for leave is foreseeable, an employee's failure to provide thirty days notice prior to taking leave may result in denial or delay of leave. An employee requesting leave under this policy should submit a completed application for leave form (forms available in the Superintendent's office) to the Superintendent/designee. An employee's failure to follow the District's call-in procedure is grounds for the delay or denial of the employee's FMLA leave request.

K. ADDITIONAL FMLA INFORMATION

The foregoing regulation represents compliance with the provisions of the Family and Medical Leave Act of 1993 and its revised regulations. Any employee desiring additional information or explanation of the rules and regulations of the Act, should review the District's General Notice Poster or arrange a conference with the Superintendent/designee.