

Family and Medical Leave Policy

Code #532.41

It is the policy of the Tri-County Area School District Board of Education to comply with the requirements of the Wisconsin and Federal Family and Medical Leave Acts (WFMLA/FMLA). Wisconsin and Federal FMLA include differing standards for eligibility, leave entitlement, rights and procedural requirements for employer and employees. When both Wisconsin and Federal FMLA apply, the employer must follow the law that provides the greatest protection for the employee. The request for or use of FMLA leave in compliance with the law shall not be the basis for any adverse employment action. Employees should direct specific questions regarding FMLA leave to the District Administrator.

General Leave Entitlements

The Wisconsin and Federal FMLA have similar but differing leave entitlements. It is the District's policy for leave entitlements to run concurrently when leave is authorized by both laws. Leave entitlements under both laws are as follows:

Wisconsin FMLA: Any employee who has been employed with the District for more than 52 weeks (for a minimum of 1,000 paid hours) is eligible for unpaid leave under the Wisconsin Act. The employee may elect to substitute available paid leave benefits for unpaid leave time (e.g. paid vacation).

The amount of unpaid leave available in a calendar year is:

1. Family Leave
 - a. Up to a maximum of six (6) weeks per twelve (12) month period for the birth or adoption of a child. The leave must begin no earlier than sixteen (16) weeks before estimated birth or placement and no later than sixteen (16) weeks after birth date or placement of the child.
 - b. Up to a maximum of two (2) weeks per twelve (12) month period to care for a child, spouse, parent, parent-in-law, domestic partner or domestic partner's parent who has a serious health condition.
2. Medical Leave
 - a. A maximum of two (2) weeks per twelve (12) month period for the employee's serious health condition.

Federal FMLA: Any employee who has worked for more than twelve (12) months (for a minimum of 1,250 hours) is eligible for unpaid leave under the Federal Act. An employee

may substitute paid leave benefits for unpaid leave subject to certain District requirements.

1. An employee may take up to twelve (12) weeks of unpaid leave during a twelve (12) month period for any one or combination of the following covered purposes:
 - a. To care for a child after the birth, placement for adoption or foster care;
 - b. To care for the employee's spouse, son, daughter, or parent who has a serious health condition;
 - c. To address certain qualifying exigencies arising from an employee's spouse, son, daughter, or parent on active duty or call to active duty in the National Guard or Reserves in support of a contingency operation;
 - d. For incapacity due to pregnancy, prenatal medical care, or post-partum recovery;
 - e. For a serious health condition that makes the employee unable to perform his/her job.
2. An employee may take up to twenty six (26) weeks of unpaid leave (less any leave previously taken under one or more of the covered purposes above) to care for an ill or injured service member who is the employee's spouse, parent, child, or "next of kin."

Serious Health Conditions

A serious health condition under this policy is an injury, illness, impairment, or physical or mental condition that involves inpatient care in a hospital, nursing home, or hospice or outpatient care that requires continuing treatment or supervision by a health care provider. Continuing treatment by a health care provider includes:

1. A period of incapacity of more than three (3) consecutive, full calendar days and subsequent treatment or period of incapacity for the same condition that involves at least two (2) visits to a health care provider within thirty (30) days of the first day of incapacity or at least one (1) visit to a health care provider that results in a regimen of continuing treatment under the supervision of the health care provider;
2. Any period of incapacity due to pregnancy or for prenatal care;
3. Any period of incapacity or treatment for incapacity due to a chronic serious health condition;

4. Any period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; or
5. Any period of absence to receive multiple treatments by a health care provider of for a condition that would likely result in a period of incapacity of more than three (3) consecutive full calendar days in the absence of medical intervention or treatment.

Medical Certification

Employees requesting leave due to their own serious health condition or the serious health condition of a family member, are required to support the request by providing a medical certification signed by the healthcare provider for the individual with a serious health condition. The Board reserves the right to certify all information permitted by law.

The employee must provide the fully completed certification to the District Administrator within fifteen (15) calendar days of the date that the certification is provided by the District, unless it is not practicable to do so despite the employee's diligent, good faith efforts. If it is not practicable to return the certification within fifteen (15) calendar days, it must be returned to the District Administrator as soon as practicable.

If the employee fails to submit the certification, the leave or continuation of leave may be delayed until the certification is submitted. Further, any absence prior to the date the certification is furnished may be considered unauthorized. An employee who is absent without authorization may be disciplined, up to and including termination.

The District Administrator will give an employee a reasonable opportunity to cure any deficiency in a certification, but not fewer than seven (7) calendar days. It is the responsibility of the employee or family member with a serious health condition to utilize a healthcare provider who will complete and furnish an accurate certification in a timely manner.

A member of the administration, other than the employee's direct supervisor, may contact the healthcare provider to obtain answers to unanswered questions on the form or to clarify illegible answers and to authenticate the certification.

If the District Administrator doubts the validity of a certification, he or she may require, at the District's expense, the employee obtain a second opinion from a District-designated provider, not regularly employed by the District. If the opinions of the employee's and the District's healthcare providers differ, a third, final and binding

opinion may be obtained. The employee must cooperate in obtaining a second or third opinion including facilitating the transfer of pertinent records to the subsequent healthcare providers.

The District Administrator may request re-certifications on a periodic basis as permitted by law.

Notice of Need for Leave

In circumstances where the need for leave is foreseeable (e.g., an expected birth, placement for adoption or foster care, or planned medical treatment for your own serious health condition or that of a family member) the employee must provide the District Administrator with notice in a reasonable and practicable manner before the leave begins. When requesting partial or intermittent leave in connection with childbirth or adoption, the employee must provide at least as much notice as required for taking other non-emergency or non-medical leave, as well as a definite schedule for the leave. Where the need for leave is not foreseeable due to uncertainty as to when leave will be required to begin, a change in circumstances, or medical emergency notice must be given as soon as practical.

The employee must provide a written request for leave, the reasons for the requested leave, and the anticipated beginning date and duration of the leave by submitting a FMLA leave request form to the District Administrator. Forms are available in the District office.

When planning medical treatment, employees should consult with their supervisor to schedule the leave and make a reasonable effort to schedule the leave so as not to unduly disrupt the District's operations, subject to the approval of the employee's healthcare provider. Employees are ordinarily expected to consult with their supervisor in order to work out a treatment schedule which best suits their needs, as well as the District's.

If an employee must take more leave than originally anticipated, he or she must notify the District Administrator within two (2) business days of learning of the circumstances necessitating the extension.

Intermittent Leave

Employees may take intermittent leave for any leave covered by Wisconsin FMLA if the employee provides notice of such leave as required by law and District policy. In the case of intermittent leave for the birth or placement of a child, leave must begin within 16 weeks after the birth or placement of the child.

When periods of leave are covered by only Federal FMLA, intermittent or reduced schedule leave may be taken when medically necessary for the employee's own serious health condition, to care for a family member with a serious health condition, and to care for a covered service member with a serious injury or illness. Employees must make reasonable efforts to schedule leave for planned medical treatment to avoid unduly disrupting the District's operations. The District may temporarily transfer an employee to a position with equivalent pay and benefits if the new position better accommodates the leave.

Leave For Instructional Employees

Additionally, special rules apply to intermittent leave for "instructional" employees under Federal FMLA. Instructional employees are employees whose principal function is to teach students in a class, small group, or individual setting and includes athletic codes, driving instructors, and special education assistants such as interpreters. Instructional employees do not include aides who do not actually teach or auxiliary personnel such as counselors, psychologist, or non-instructional support staff. These special rules apply to intermittent or reduced schedule leave and to all leaves scheduled near the end of a semester.

1. If an instructional employee needs intermittent or reduced schedule leave that is foreseeable based on planned medical treatment and the employee will be on leave for more than 20 percent of the total number of working days over the period of leave, the District may require the employee to choose one of the following options to minimize the disruption to the educational process:
 - a. Option 1: Take leave for a particular duration, not longer than the duration of the planned treatment. If this option is selected, the entire amount of leave will be counted against the FMLA leave entitlement.
 - b. Option 2: Transfer temporarily to an available alternative position, for which the employee is qualified, has equivalent pay and benefits, and which better accommodates recurring periods of leave.
2. If an instructional employee does not give required notice of foreseeable leave to be taken intermittently or reduced schedule leave, the District may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position, or delay the taking of leave until the employee has given the necessary notice.
3. If an instructional employee begins leave more than five (5) weeks before the end of a semester, the leave will last at least three (3) weeks, and the employee

would return to work during the last three (3) weeks of the semester, the District may require the employee to continue taking leave until the end of the semester.

4. If an instructional employee that begins leave during the final five (5) weeks of a semester because of the birth or placement of a child, to care for a family member due to a serious health condition or to care for a covered service member, that will last more than two (2) weeks, and the employee would return to work during the last two (2) weeks of the semester, the District may require the employee to continue taking leave until the end of the semester.
5. If an instructional employee begins leave that will last at least five (5) work days during the final three (3) weeks of a semester because of the birth or placement of a child, to care for a family member due to a serious health condition or to care for a covered service member, the District may require the employee to continue taking leave until the end of the semester.
6. When an instructional employee is required to take leave until the end of the semester as provided above, only the period of leave until the employee is ready and able to return to work shall be counted against an employee's FMLA entitlement. However, the District is required to maintain the employee's group health insurance and restore the employee to the same or equivalent job at the conclusion of the leave.

Substituting Paid Time Off

During the period of leave covered by Wisconsin FMLA, employees may elect whether to substitute any accrued paid leave for unpaid FMLA leave. During leave only covered by Federal FMLA, an employee may substitute any paid leave the employee would be eligible to take in compliance with the District's normal paid leave policies. During leave only covered by Federal FMLA, the District may require employees to substitute accrued paid leave.

Benefits During Leave and Return to Work

An employee's coverage under group health plans will be maintained during the period of FMLA leave. Employees remain responsible for their portion of monthly insurance premiums during the period of leave regardless of whether the employee's leave is on an unpaid basis. If paid leave is substituted, the employee's portion will be deducted from employees' regular paycheck. Failure to pay monthly premiums for 30 days may result in the termination of insurance coverage for the duration of the leave. Employees whose

Code #532.41 Family and Medical Leave Policy continued ...

insurance coverage has been terminated for non-payment are entitled to reinstatement of coverage when returning from leave.

Employees who return to work from FMLA leave within the protected timeframes will be returned to their former position or, if that position is no longer available, an equivalent position with equivalent pay, benefits, and other terms of employment. If an employee took FMLA leave for their own serious health condition, a fitness for duty certification may be required before the employee returns to work.

Legal Reference: Section 103.10, Wisconsin Statutes.
Family and Medical Leave Act 29 U.S.C. 2601, et seq.

Attorney Review: February, 2017
1st Reading: February 27, 2017
Final Approval: March 28, 2017