



Book	Policy Manual
Section	3000 Professional Staff
Title	FAMILY & MEDICAL LEAVE OF ABSENCE ("FMLA")
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3430.01 - **FAMILY & MEDICAL LEAVE OF ABSENCE ("FMLA")**

In accordance with Federal law, the District shall provide up to twelve (12) weeks of unpaid FMLA leave in any twelve (12) month period to eligible administrators for the following reasons:

A-1: the birth of a child and/or the care of a newborn child within one (1) year of the child's birth;

B-1: the placement of a child with the staff member by way of adoption or foster care and/or to care for the child within one (1) year of the child's arrival;

C-1: the staff member is needed to care for a spouse, parent or dependent child if such individual has a serious health condition, or

D-1: the staff member's own serious health condition prevents him/her from performing the functions of his/her position.

Employee Entitlement to Service Member FMLA

Leave Entitlement

Service member FMLA provides eligible employees unpaid leave for one, or for a combination, of the following reasons:

A-2: A "qualifying exigency" arising out of a covered family member's (spouse, son, daughter, or parent) covered active duty or call to covered active duty in the United States Armed Forces including the National Guard and Reserves. Qualifying exigencies, as defined by Federal regulations, include: 1) short-notice deployment; 2) military events and related activities; 3) childcare and school activities; 4) financial and legal arrangements; 5) counseling; 6) rest and recuperation (maximum fifteen (15) calendar days); 7) post-deployment activities; 8) caring for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty; and 9) additional activities not encompassed in the other categories, but agreed to by the employer and employee. Covered active duty means deployment with the Armed Forces to a foreign country.

B-2: To care for a covered family member, including next of kin as provided in the statute, who has incurred an injury or illness or aggravation of a pre-existing illness or injury while in the line of duty while on covered active duty in the United States Armed Forces, including the National Guard and Reserves, provided that such injury or illness may render the family member medically unfit to perform duties of the member's office, grade, rank, or rating. Covered active duty means deployment with the Armed Forces to a foreign country. This leave is also available to care for veterans of the United

States Armed Forces, including the National Guard and Reserves, provided the veteran was a service member at any time within the five (5) years prior to the start of the treatment, recuperation or therapy. In accordance with applicable regulations, a veteran's serious injury or illness incurred or aggravated in the line of active duty can also be manifested by: 1) a physical or mental condition with a VA Service Disability Rating of 50% or greater and is the condition precipitating the need for leave; or 2) a physical or mental condition that substantially impairs the ability to secure or substantially follow a gainful occupation, or would do so absent treatment; or 3) an injury, including psychological, for which the veteran has been enrolled in the Dept. of V.A. Program of Comprehensive Assistance for Family Care Givers.

Duration of Service Member FMLA

- A. When leave is due to a "Qualifying Exigency": An eligible employee may take up to twelve (12) work weeks of leave during any twelve (12) month period. Such leave shall be counted with regular FMLA leave time in calculating the twelve (12) weeks of allowable leave.
- B. When leave is to care for an injured or ill service member: An eligible employee may take up to twenty-six (26) work weeks of leave during a single twelve (12) month period to care for the service member who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness. This is a one time benefit per service member. Leave to care for an injured or ill service member, when combined with other FMLA-qualifying leave, may not exceed twenty-six (26) weeks in a single twelve (12) month period.
- C. Service Member FMLA runs concurrent with other leave entitlements provided under Federal, State, and local law.

General FMLA Provisions

Administrators are "eligible" if they have worked for the District for at least twelve (12) months, and for at least 1,250 hours over the twelve (12) months prior to the leave request. Service time may be aggregated when the break in service is less than seven (7) years for military obligation or subject to recall under a collective bargaining agreement. All full-time administrators are deemed to meet the 1,250 hour requirement. All periods of absence from work due to or necessitated by USERRA-covered service is counted in determining an employee's eligibility for FMLA leave.

Twelve (12) month period for determining hours worked and use of leave is defined as a rolling twelve (12) month period measured backward from the date the staff member uses FMLA leave (i.e. the "leave year" is specific to each individual staff member).

For Service Member FMLA leave, the use of the twenty-six (26) weeks of leave will be measured forward from the first date on which the employee takes leave.

Serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves:

- A. inpatient care, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or
- B. continuing treatment by a healthcare provider, including:
 - 1. a period of incapacity of more than three (3) consecutive full calendar days and any subsequent treatment or period of incapacity relating to the same condition, that also involves either in person treatment two (2) or more times by a healthcare provider within thirty (30) days of the first date of incapacity absent extenuating circumstances beyond the employee's control, or in person treatment by a healthcare provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of a healthcare provider;

The first visit to the healthcare provider must occur within seven (7) days of the first date of incapacity.

- 2. any incapacity due to pregnancy or for prenatal care;

An expectant mother is entitled to FMLA leave for incapacity due to pregnancy even if she does not receive treatment from a healthcare provider during the absence, and even if the absence does not last for more than three (3) consecutive, full calendar days.

- 3. any period of incapacity or treatment for such incapacity due to a chronic serious health condition;

4. a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective;
5. any period of absence to receive multiple treatments by a healthcare 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 (3) consecutive days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis);

C. conditions for which cosmetic treatment are administered are not "serious health conditions" unless inpatient hospital care is required or complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomachs, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, periodontal disease, etc., are conditions that do not meet this definition and do not qualify for FMLA leave.

Whenever the leave is foreseeable, the staff member shall provide the District with thirty (30) days notice. If there is insufficient time to provide such notice because of unforeseeable events, the staff member shall provide such notice as soon as possible and practical, generally not later than the next business day after the employee realizes the need for leave. Failure to follow the leave notice requirements may result in delay of obtaining the leave. Employees will still be required to comply with the absence reporting procedures at their buildings.

When planning medical treatment, the staff member must consult with the District and make a reasonable effort to schedule the leave so as not to unduly disrupt the regular operation of the District, subject to the approval of the healthcare provider.

The staff member may request to substitute any of his/her earned or accrued paid vacation leave, personal leave or family leave (per the applicable collective bargaining agreement) for unpaid FMLA leave provided for the birth, adoption or foster care placement of a child, or qualifying exigency for a Service Member Family Leave (see A-1, B-1, and A-2 on page one).

The staff member may request to substitute any of his/her earned or accrued paid vacation, personal leave or sick leave (per the applicable collective bargaining agreement) for unpaid FMLA leave provided for the staff member's own serious health condition or to care for a spouse, parent or dependent child with a serious health condition (see C-1 and D-1 on page one and B-2 on page two).

If the staff member has not earned or accrued adequate paid leave to encompass the entire twelve (12) or twenty-six (26) week period of FMLA leave, any additional weeks of leave to which the staff member is entitled to shall be unpaid. Whenever a staff member uses paid leave for a qualifying leave under this policy, such leave will count towards the maximum allowable leave, the paid leave, and FMLA/Service Member Family leave to which the staff member is entitled will run concurrently.

The District may allow a staff member to take FMLA leave intermittently or on a reduced-leave schedule for the birth, adoption or foster care placement of a child (see A-1 and B-1 on page one). A staff member may take FMLA leave on an intermittent or reduced-leave schedule when medically necessary for his/her own serious health condition or to care for a spouse, parent or dependent child with a serious health condition (see C-1 and D-1 on page one). The taking of such leave results in the total reduction of the twelve (12) weeks only by the amount of leave actually taken. Leave will be accounted for in increments no greater than the smallest increment used for other similar leaves, but in no event greater than one (1) hour increments. Leave entitlement will not be reduced by more than the amount of leave actually taken.

If the intermittent or reduced-leave schedule is foreseeable based on planned medical treatment, the District may require the staff member to transfer temporarily to an available alternative position which better accommodates recurring periods of leave. The alternative position shall have equivalent pay and benefits but not necessarily equivalent duties. Instructional staff members (i.e. individuals whose principal function is to teach and instruct students in a class, a small group, or an individual setting) who request intermittent leave or a reduced-leave schedule which would exceed twenty percent (20%) of the total number of working days over the period of anticipated leave must elect either to:

- A. take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- B. transfer temporarily to an available alternative position offered by the District for which the instructional staff member is qualified, and that has equivalent pay and benefits and that better accommodates the recurring periods of leave than the staff member's regular position.

The District will notify the staff member when the District intends to designate leave as FMLA-qualifying. Such notice may be given orally or in writing. When verbal notice is given, it will be followed by written notice within ten (10) business days. In the case of intermittent or reduced-leave schedule leave, only one (1) such notice is required unless the circumstances regarding the leave have changed. If the District does not have sufficient information about the reason for an employee's use of paid leave, the District may inquire further to ascertain whether the paid leave is FMLA-qualifying. Once the District learns that a paid leave is for an FMLA leave-qualifying reason, the District will promptly notify the staff member that the paid leave will count toward the staff member's twelve (12) week FMLA-leave entitlement.

In cases in which the District employs both spouses, the total amount of FMLA leave is twelve (12) weeks for the couple, except when the leave is due to the serious health condition of either spouse or a child, or twenty-six (26) weeks of FMLA leave for Service Member Leave.

When FMLA leave is taken for the staff member's own serious health condition or to care for a spouse, parent or dependent child with a serious health condition (see C-1 and D-1 on page one), the staff member must provide medical certification from the healthcare provider of the eligible staff member or his/her immediate family member. When the staff member requests qualifying Service Member Leave, he/she must provide certification of a qualifying exigency or of the service member's serious illness. For service member leave, any certification permitted under 29 C.F.R. 825.310 shall be allowed.

The staff member may either:

- A. submit the completed medical certification to the District; or
- B. direct the healthcare provider to transfer the completed medical certification directly to the District, which will generally require the staff member to furnish the healthcare provider with a HIPAA-compliant authorization.

In the event the staff member fails to provide medical certification, any leave taken by the employee will not qualify for FMLA Leave/Service Member Family Leave.

When the need for FMLA leave is foreseeable and at least thirty (30) days notice has been provided, the staff member must provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the Superintendent within fifteen (15) calendar days after the staff member requests FMLA leave unless it is not practicable under the circumstances to do so despite the staff member's diligent and good faith efforts.

Any dispute over eligibility for FMLA leave shall be discussed between the employee and District. The District shall be responsible for maintaining a record of those communications.

The District reserves the right to obtain, at its expense, the opinion of a second healthcare provider and, in the event of conflict, the opinion of a third healthcare provider whose decision shall be binding and final. The staff member may either:

- A. submit the opinion of the second healthcare provider, and the opinion of the third healthcare provider if applicable, to the District; or
- B. direct the second or third healthcare provider to transfer his/her opinion directly to the Superintendent, which will generally require the staff member to furnish the healthcare provider with a HIPAA-compliant authorization.

In the event the staff member fails to provide the medical opinion of the second or third healthcare provider, if applicable, any leave taken by the employee will not qualify for FMLA leave.

A staff member who takes leave for his/her own serious health condition prior to returning to work, must provide the District with a statement from his/her healthcare provider that he/she is able to resume work.

Upon return from any FMLA leave, the District will restore the staff member to his/her former position or to a position with equivalent employment benefits, pay and conditions of employment. During FMLA leave, the District shall maintain the staff member's current coverage under the District's group health insurance program on the same conditions as coverage would have been provided if the staff member had been continuously working during the leave period. If the staff member was paying all or part of the premium payments prior to going on FMLA leave, the staff member must continue to pay his/her share during the leave.

Any leave or return from leave during the last five (5) weeks of an academic term shall be reviewed individually by the District to minimize disruption to the students' program. Special rules under the FMLA may apply for instructional staff.

The staff member shall not accrue any sick leave, vacation, or other benefits during a period of unpaid FMLA leave.

The use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of the staff member's leave.

If the staff member fails to return to work at the end of the leave for reasons other than the continuation, recurrence, or onset of a serious health condition of the staff member or of the staff member's immediate family member, or for circumstances beyond the control of the staff member, the staff member shall reimburse the District for the health insurance premiums paid by the District during the unpaid FMLA leave period.

Communication Requirements

When the need for FMLA leave is not foreseeable, an employee on FMLA shall comply with the employer's usual and customary notice and procedural requirements for requesting leave. Employees on FMLA shall also follow District call-in guidelines like any other employee. Under FMLA regulations, an employee must comply with the District's call-in procedures unless unusual circumstances prevent them from doing so. In such cases, the employee shall provide notice to his/her supervisor as soon as practicably possible. Failure to provide timely absence or tardy notice to the employee's immediate supervisor shall lead to FMLA leave approval delays or denials, and are subject to progressive employee discipline where good cause is not shown. Failure to adhere to daily call-in requirements may also result in delays to processing intermittent and reduced schedule FMLA leave requests and associated compensation requests.

Work Beyond District Employment While on FMLA Leave

District Policy 3430.02 titled Outside Employment prohibits outside supplemental employment for all District employees while on any type of leave. An employee approved for FMLA leave shall therefore not work in any capacity that impedes the employee's recovery from, or treatment for reported health condition(s). As such, employees found to be engaging in outside employment while on FMLA leave that potentially impedes the employee's recovery efforts shall be subject to investigation, potential disciplinary action and dismissal.

FMLA fraud occurs when employees take FMLA leave for purposes other than those permitted under FMLA. For example:

- Working for another employer, performing same or similar duties that the employee's FMLA medical certification form says he or she is not able to perform; or
- Engaging in off-duty activity, while on FMLA leave for one's own serious health condition, that is inconsistent with the limitations the serious health condition imposes.

Travel While on FMLA Qualifying Leave

Whether District employees engage in personal travel while on FMLA leave and retain the law's protections will depend on the nature of their activities while engaging in personal travel, and whether those activities stand in contrast to the reason FMLA qualifying leave was taken. This policy requires employees on medical leave to stay close to home and allows travel for purpose of obtaining treatment for themselves or to care for an immediate family member (spouse, child, or parent) with a serious health condition. Long distance travel requires written permission from the District.

Recertification

To the extent permitted by applicable law, if the District has reason to doubt the validity of a medical certification, the District shall exercise its right to obtain a second or third medical opinion at the District's expense. If the District determines that the certification is incomplete, it shall provide a written notice indicating what additional information is required.

During an FMLA leave, employees shall be required to provide the District periodic status updates regarding expected date of return and/or intent to return to work.

Recertification shall be required no more often than every thirty (30) days in connection with an absence by the staff member unless the condition will last for more than thirty (30) days. For conditions that are certified as having a minimum duration of more than thirty (30) days, the District will not request recertification until the specified period has passed, except that in all cases the staff member must submit recertification every six (6) months in connection with an absence by the employee. Additionally, the District may require a staff member to provide recertification in less than thirty (30) days if the staff member requests an extension of leave, the circumstances described in the previous certification have changed significantly, or if the District receives information that casts doubt upon the staff member's stated reason for the absence or the continuing validity of the certification. Finally, staff members must provide a new medical certification each leave year for medical conditions that last longer than one (1) year. If an employee fails to provide a recertification within a reasonable time under the particular facts and circumstances, then the employer may deny continuation of the FMLA leave protections.

A staff member who takes leave for their own serious health condition that makes him/her unable to perform the functions of his/her position; prior to returning to work, must provide the District and his/her designees with a fitness-for-duty certification that specifically addresses the staff member's ability to perform the essential functions of his/her job. The fitness-for-duty certification shall only apply to the particular health condition that caused the staff member's need for FMLA leave. If reasonable safety concerns exist, the District shall under certain circumstances, require a staff member to submit a fitness-for-duty certification before he/she returns to work from FMLA leave. The cost of the certification shall be borne by the staff member.

Dishonesty, Fraud, and Misuse of FMLA

All credible reports of suspected FMLA abuse shall be investigated and documented. FMLA dishonesty, fraud, and abuse refers to employees' legitimate use of FMLA qualifying leaves in a fraudulent manner, or in cases where FMLA was fraudulently obtained by the employee. All findings of FMLA malfeasance and or abuse shall be subject to disciplinary action and dismissal. Under all

circumstances where an employee has committed fraud in obtaining FMLA leave, the District is exempted from all obligations to the employee under FMLA rules. A staff member who fraudulently obtains and uses FMLA leave is not protected by this policy's job restoration or maintenance of health benefits provisions.

Compliance

Absent extenuating circumstances, if an employee fails to follow this policy, the District shall exercise its right to delay or deny the FMLA request. The District shall prepare administrative guidelines that are appropriate for this policy and shall ensure that the policy and associated administrative guidelines are posted and properly adhered to.

In any areas where discretion is allowed in the implementation of this policy or its guidelines for implementation, such discretion shall be exercised in a non-discriminatory manner. Similarly situated persons shall be treated similarly.

The District shall provide a copy of this policy to all staff members on any form of FMLA. A notice of Rights and Obligations shall also be provided each time an employee requests FMLA leave or the District has sufficient information to believe that the employee may qualify for FMLA leave.

The approval, denial and administration of leave under this policy will be governed by the Family Medical Leave Act of 1993, as amended, and its published regulations, as applied and interpreted by the Superintendent and his/her designees.

The District will not interfere with, restrain, or deny the exercise or attempted exercise of a right established under this FMLA policy. Further, the District will not discharge, fine, suspend, expel, discipline, or discriminate against a staff member with respect to any term or condition of employment because of the staff member's actual or potential exercise, or support for another employee's exercise, of any right established under this FMLA policy. Nothing herein shall prevent the District from taking an employment action that is independent of the exercise of a right under this FMLA policy. Finally, the District will not deprive an employee who takes FMLA pursuant to this policy of any benefit that accrued before the date that leave commences.

Legal

29 U.S.C. 2601 et seq.

29 C.F.R. Part 825

P.L. 110-181, Sec. 585 – National Defense Authorization Act (January 28, 2008)

P.L. 111-84, Sec. 565 – National Defense Authorization Act (October 28, 2009)

29 C.F.R. Part 1630

29 U.S.C. 794, Section 504 Rehabilitation Act of 1973, as amended,

34 C.F.R. Part 104

42 U.S.C. 12101 et seq., Americans with Disabilities Act of 1990, as amended