

Board Policy GBRIG: Federal Family and Medical Leave Act

Status: ADOPTED

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Federal Family and Medical Leave Act

It is the purpose of this policy to set out in summary form the provisions of the Family and Medical Leave Act ("the Act" or "FMLA") and its implementing regulations. The Bibb County School District ("District") does not intend for this policy or any accompanying rules or regulations to create any additional right to leave not provided by the FMLA. Any portion of this policy or any accompanying rules or regulations inconsistent or contrary with the FMLA is unintentional and shall not be given effect.

A. Eligible Employees

Employees who have been employed by the Board for at least 12 months and who have worked at least 1250 hours during the 12-month period immediately preceding the commencement of the leave are eligible to take unpaid leave under FMLA.

B. Definitions

"Covered Active Duty" means for members of the regular Armed Forces, duty during deployment to a foreign country; for members of a Reserve component of the Armed Forces, duty during deployment to a foreign country under a call or order to active duty pursuant to federal law.

"Covered Service member" (for qualifying exigency leave) means the employee's spouse, child or parent under a federal call or order to covered active duty.

"Covered Service member" (for ~~Mmilitary Ccaregiver LLeave~~) ~~means the employee's spouse, child, parent or next of kin who is means~~ (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, therapy, or otherwise in outpatient status, or on the temporary disability retired list for a serious injury or illness; or (2) a veteran who was a member of the Armed Forces at any time during the five years preceding the date on ~~which the veteran undergoes such medical treatment, recuperation, or therapy which the eligible employee takes FMLA leave to care for the covered veteran.~~

"Intermittent Leave" means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks.

"Instructional employee" or "Teacher" means an employee whose principal function is to teach and instruct students in a class, a small group, or an individual setting.

"Next of Kin" ~~applies only to Military Caregiver Leave and of a covered service member~~ means the nearest blood relative other than the covered service member's spouse, parent, son or daughter, in the following order of priority: blood relatives granted legal custody of the covered service member, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative for purposes of FMLA caregiver leave.

"Outpatient Status" with respect to a covered service member ~~who is a current member of the Armed Forces~~, means (1) the status of a member of the ~~Aarmed~~ Forces assigned to either a military medical treatment facility as an outpatient or (2) a unit established for the purpose providing command and control of members of the Armed Forces receiving medical care as outpatients.

"Parent" means a biological, adoptive, step or foster mother or father or one who acted in place of a parent when the employee was a child. The term "parent" does not include parent "in law."

"Parent of covered service member" means a biological, adoptive, step or foster ~~mother or fatherparent~~ or any other individual who acted in place of a parent of the covered service member. The term does not include

parents “in law.”

“Serious Health Condition” means ~~an illness, injury, impairment, or physical or mental condition that involves inpatient care requiring an overnight stay in a hospital, hospice or residential medical care facility or continuing treatment by a health care provider,~~ a. An illness, injury, impairment, or physical or mental condition that involves: a. An overnight stay in a hospital, hospice or residential medical care; or b. Continuing treatment by a health care provider for a condition that either prevents the individual from performing the functions of his/her job or other regular daily activities or from attending school. Subject to certain conditions, the continuing treatment of a serious health condition requirement may be met by:

(1) A period of incapacity of more than 3 consecutive, full calendar days combined with at least two visits to a health care provider within 30 days of the first day of the incapacity or one visit and a regimen of continuing treatment. The first visit must occur within 7 days of the start of the incapacity;

(2) Incapacity due to pregnancy or for prenatal care;

(3) Incapacity due to a chronic condition;

(4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective;

(5) Conditions requiring multiple treatments. all as further defined in the FMLA regulations.

“Serious Injury or Illness” means, an injury or illness incurred by a covered service member in the line of active duty (or that existed before active duty and was aggravated by line of duty active service) that may render the service member medically unfit to perform the duties of the member’s office, grade, rank, or rating. In the case of a veteran, “serious injury or illness” means a qualifying injury or illness incurred during or aggravated by active duty during the five years before undergoing treatment, recuperation, or therapy, and that manifested itself before or after the member became a veteran.

“Son or daughter” means a biological, adopted or foster child, a stepchild, a legal ward, or a child for whom the employee acts as a parent. The son or daughter must be under age 18 or, if the son or daughter is age 18 or older, he/she must be incapable of self-care due to a mental or physical disability at the time FMLA leave is to begin.

“Son or daughter of a covered service member” means a covered service member’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered service member acted in the place of a parent, and who is of any age.

“Spouse” means a husband or wife as defined or recognized under Georgia law.

C. **Amount and Type of Leave Taken**Qualifying Reasons for Leave

Any eligible employee may request leave for one or more of the following reasons:

1. Birth of a son or daughter and to care for the newborn child;
2. Adoption or foster placement with the employee of a son or daughter and to care for the newly placed child;
3. To care for the employee’s spouse, son, daughter or parent, if that person has a serious health condition;
4. Serious health condition of the employee that prevents the employee from performing one or more his/her essential job functions;
5. Qualifying Exigency Leave - Any qualifying exigency arising from the fact that the employee’s family member (the covered service member) is on covered active duty. Qualifying exigencies are defined as short-notice deployment (seven or less calendar days); military events and related activities; child care and school activities; financial and legal arrangements; counseling; rest and recuperation (up to fifteen calendar days per instance); post- deployment activities; parental care; additional activities where the employer and employee agree that the leave is an exigency and agree to both timing and duration of the

leave; and

6. Military Caregiver Leave - Military caregiver leave to care for a covered service member with a serious injury or illness of the employee's spouse, son, daughter, parent or next of kin of the service member.

D. Amount of Leave

Except as provided below, an employee may take up to a total of 12 weeks leave during any twelve-month period. A "rolling year" shall be used to determine the twelve-month period during which the leave entitlement may occur. That is, each time an employee takes FMLA leave, the remaining leave entitlement would be any balance of the number of weeks that has not been used during the immediately preceding 12 months. See 29 C.F.R. § 825.200(b)(4).

~~If both spouses work for the District and both are eligible for FMLA leave, they are authorized to take only a combined total of 12 weeks leave during any one 12-month period to care for a newborn or adopted child, a child placed with the employee for foster care, or a parent with a serious health condition.~~

FMLA for Child Bonding

Eligible employees are allowed up to 12 weeks of unpaid leave under FMLA for the birth and care of a newborn or the legal placement of a child with the employee for adoption or foster care ("child bonding").

As provided by law, the District requires that FMLA leave for child bonding be taken in a continuous block. If a parent, adoptive, or foster parent chooses not to utilize the entire FMLA child bonding leave in a 12-week continuous block, s/he forfeits any remaining FMLA leave for child bonding. S/he does not forfeit any remaining FMLA leave for another qualifying event. Leave for child bonding must be completed within 12 months after the birth, adoption, or foster placement.

When both spouses are employed by the school system, the combined total amount of leave that may be taken because of the birth, adoption or foster care placement of a child and bonding with the child may not exceed 12 weeks during a 12-month period. This restriction does not apply to leaves of absence occasioned by either spouse's own serious health condition or that of their child.

Any necessary qualifying FMLA leave taken **prior** to the birth or placement of a child does not constitute child bonding for purposes of FMLA and is not subject to the limitations of use of FMLA for child bonding.

~~In the event of the birth, adoption or foster placement of a son or daughter, all leave must be completed within twelve months after the birth, adoption or foster placement.~~

FMLA for Military Leave

An eligible employee is eligible to take up to 26 weeks of military caregiver leave during a "single 12-month period." The "single 12-month period" begins on the date the employee first takes military caregiver leave and ends 12 months after that date, regardless of the method used to determine the leave entitlement period for other FMLA reasons.

If both spouses work for the District and both are eligible for the military caregiver leave, they are authorized to take only a combined total of 26 weeks during the "single 12-month period" described above for military caregiver leave or a combination of military caregiver leave and leave taken for other FMLA reasons.

The District will require that any accrued paid leave (sick, personal, vacation, or any other paid leave) be substituted for (run concurrently with) all or part of the otherwise unpaid FMLA leave under the terms and conditions of the District's normal leave policies. Because leave pursuant to an employee's disability benefit plan or workers' compensation absence is not unpaid, the provision for required substitution of accrued paid leave is not applicable in such cases.

D. Intermittent or Reduced Leave

An employee may take leave on an intermittent or reduced leave schedule where it is medically necessary due to the serious health condition of a covered family member, the employee, or the serious injury or illness of a covered service member, or when necessary because of a qualifying exigency. The District will require a certification, in the form designated by the District, to document the necessity of such intermittent leave or reduced schedule leave.

An employee will not be allowed to take intermittent leave for the birth, adoption, or placement of a son or daughter, except to the extent such leave is required due to the serious health condition of the mother or child.

E. Notification of Leave

If the need for FMLA is foreseeable, an employee requesting leave must provide at least 30 days' advance notice to the Superintendent or his/her designee. If such advance notice is not possible, the employee must give notice as soon as practicable, which means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. If an employee does not provide at least 30 days' notice of foreseeable leave, he or she must explain why such notice was not practicable if so requested by the District. When the need for leave is not foreseeable, an employee must provide notice as soon as practicable, which generally should be according to the District's usual and customary ~~absence notification leave~~ requirements. When planning medical treatment, and subject to the approval of the health care provider, employees should consider the District's academic calendar and their work schedule so that any corresponding leave will not disrupt the operations of the District.

Employees must provide sufficient information for the District to reasonably determine whether the FMLA may apply to the leave request. Failure to do so may result in a denial of the employee's FMLA request.

When an employee seeks leave due to an FMLA-qualifying reason for which the District has previously provided FMLA leave, the employee must specifically reference either the previous qualifying reason for leave or the need for FMLA leave.

F. Benefits and Return to Work

Employees will be eligible to maintain health care benefits provided by the District while on FMLA leave. The District will pay the employer's portion, if any, of such benefits. The employee will pay the same portion, if any, of such benefits as the employee paid before beginning the leave.

The District may recover any health care benefit premiums paid on behalf of an employee if the employee does not return to work after the leave period has expired, unless the employee did not return due to a serious health condition of the employee or the employee's spouse, parent or child, or a serious injury or illness of a covered service member or other circumstance beyond the employee's control. In such case, tThe District shall require certification from the health care provider that a serious health condition of the employee or family member, or the covered service member's serious injury or illness, prevented the employee from returning from work.

With the exception of paid vacations, personal, sick, or any other paid leave required to be substituted for unpaid leave under Section C above, the employee's absence during leave will not alter benefits which the employee accrued before taking leave. Any accrued benefits will not be lost during the leave.

Upon return from leave, the employee is entitled to be reinstated to a position equivalent to the one the employee held when he/she left on FMLA leave. Job restoration may be denied if conditions unrelated to the FMLA leave have resulted in the elimination of the employee's position or if the employee qualifies as a "key employee" (generally the highest 10% of the workforce). Key employees may be denied job restoration if it causes substantial and grievous economic injury to the District's operation, as determined by the District.

G. Required Certification and Reporting

The District requires that a request for leave due to a serious health condition of an employee or an

employee's family member or a serious injury or illness of a covered service member be supported by certification by the appropriate health care provider of the eligible employee or family member on a form to be provided by the District. This certification for a serious health condition must include (1) the name, address, telephone and fax numbers of the healthcare provider and type of practice/specialization; (2) the approximate date on which the serious health condition commenced, and its probable duration; (3) a statement or description of appropriate medical facts regarding the patient's health condition for which FMLA leave is requested; (4) if the purpose of the leave is to care for a family member, a statement that the employee is needed to care for the family member and an estimate of the frequency and duration of the leave required for such care; (5) if the leave is due to the employee's own health condition, a statement that the employee is unable to perform his/her essential job functions, the nature of other work restrictions, and the likely duration of such inability; and (6) if intermittent or reduced schedule leave is requested, information sufficient to establish the medical necessity for the same and an estimate of the dates and duration of treatments and any periods of recovery. The employer will require that the eligible employee obtain subsequent recertification on a reasonable basis as requested by the District in accordance with the FMLA regulations.

The District, at its own expense, may obtain the opinion of a second health care provider of the District's choice, if the District should choose to do so. If a conflict exists between the opinion in the certification and the second opinion, the District may, at its own expense, obtain a third opinion from a health care provider upon which the District and the employee jointly agree. Such a third opinion as to the necessity for the leave is binding on both the District and the employee.

Upon an employee's return to work after leave for the employee's own serious health condition, the District shall require the employee to obtain certification from his/her health care provider that the employee is able to resume job duties.

The District shall require that a first request for leave because of a qualifying exigency arising from active duty or a call to active duty be supported by a copy of the covered service member's active duty orders or other documentation issued by the military. A certification form requesting the required information to support a request for exigency leave will be provided by the District upon request.

The District shall require an employee on FMLA leave to report periodically to his/her principal, supervisor or FMLA Coordinator of the employees' status and intent to return to work. Failure by an employee to report to their principal or supervisor as directed, to provide the required medical recertification, or to return to work upon expiration of a FMLA leave may result in termination of the employee. Failure to furnish a fitness-for-duty certification of the employee's ability to return to work and to perform the essential functions of the job with or without reasonable accommodations may result in the delay of job restoration or the termination of the employee.

H. Special Provisions

False Information

Employees are expected to honestly request FMLA and submit authentic medical information and report to a principal or supervisor as directed. The District will investigate any suspected FMLA abuse or potentially false FMLA documentation. Employees found to have submitted false FMLA information or improperly taken FMLA leave may be subject to discipline, up to and including termination.

Instructional Employees

Instructional Employees (Intermittent Leave) - When an instructional employee seeks intermittent leave or leave on a reduced schedule in connection with a family or personal serious health condition or to care for a covered service member that would constitute more than 20% total number of working days during which the leave would extend, and the employee has provided 30 days' notice of such leave, the District may require the employee to choose to either: (1) take leave in a block (not intermittently) for the entire period; or (2) temporarily reassign the employee to an available alternative position, which has equivalent pay and benefits, but better accommodates recurring periods of leave than the employee's regular position.

If an instructional employee does not give required notice of foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the District may require the employee to take leave of a particular duration, or to

transfer temporarily to an available alternative position. Alternatively, the District may require the employee to delay the taking of leave until the notice provision is met.

Instructional Employees and FMLA Leave - An eligible instructional employee may be required to continue his/her leave until the end of a semester when the employee begins the leave:

1. More than five weeks before the end of the semester, the leave will last at least three weeks, and the employee would return to work during the three week period before the end of the semester.
2. For a purpose other than the employee's own serious health condition: (a) During the five week period before the end of a semester, the leave will last more than two weeks, and the employee would return to work during the two week period before the end of the semester; (b) During the three week period before the end of a semester and the leave will last more than five workdays.
3. If an eligible employee is required to take leave until the end of the semester, 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.

Employees who do not qualify for FMLA leave

Employees who are not eligible for extended medical leave under FMLA may apply for long-term medical leave with the District (see the attached regulation).
