

## ADMINISTRATIVE GUIDELINES

Special Services, Johnson County and Surrounding Schools

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### **SERIES 500: PERSONNEL**

#### **Section 501: General**

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#### **501.10 Family Medical Leave Act (FMLA)**

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The following guidelines were extracted from the Family and Medical Leave Act. For additional guidelines, the Act can be found in its entirety at [www.dol.gov/whd/fmla](http://www.dol.gov/whd/fmla).

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#### **Definitions Applicable to FMLA Leave**

The term "child" (i.e., son or daughter) means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age eighteen (18), or age eighteen (18) or older and "incapable of self-care" because of a mental or physical disability, at the time the FMLA leave is to commence.

The term "incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three (3) or more of the "activities of daily living" (ADLs) (e.g., caring appropriately for one's grooming and hygiene, bathing, dressing, eating) or "instrumental activities of daily living" (IADLs) (e.g., cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.).

An employee is "unable to perform the functions of his/her position" where the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position. Additionally, an employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

#### **Leave for Adoption or Foster Care**

Eligible employees may take FMLA leave before the actual placement or adoption of a child if an absence from work is required for the placement or foster care to proceed. Permissible absences include, but are not limited to, the employee attending a required counseling session, appearing in court, consulting with his/her attorney or the doctor(s) representing the birth parent, submitting to physical examinations, or traveling to another country to complete an adoption.

## **Military Family Leave Entitlements**

### **A. Military Caregiver Leave**

Eligible employees may take up to twenty-six (26) weeks of unpaid FMLA leave, in a "single 12-month period," to care for a covered service member with a serious injury or illness. The "single 12-month period" begins on the first day the eligible employee takes Military Caregiver Leave and ends twelve (12) months after that date. If the employee does not use his/her entire twenty-six (26) work weeks leave entitlement during the "single 12-month period" of leave, the remaining work weeks of leave are forfeited.

For purposes of Military Caregiver Leave, the covered service member may be a (1) member of the Armed Forces (including a member of the National Guard or Reserves) 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 or (2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. Serious injury or illness for purposes of Military Caregiver Leave is defined as an injury or illness incurred by a covered service member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the covered service member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the service member medically unfit to perform the duties of his/her office, grade, rank, or rating. In the case of a veteran the injury or illness could have manifested itself before or after the member became a veteran.

The term "son or daughter of a covered service member" means a covered service member's biological, adopted, or foster child, stepchild, legal ward, or child for whom the service member stood in loco parentis, and who is of any age. Similarly, the term "parent of a covered service member" means a covered service member's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered service member. (The term does not include parents "in-law.")

The term "next of kin" means the service member's nearest blood relative, other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have

been granted legal custody of the service member by court decree or statutory provisions; brothers and sisters; grandparents; aunts and uncles; and first cousins; unless the covered service member has specifically designated in writing another blood relative as his/her nearest blood relative for purposes of Military Caregiver Leave under the FMLA, in which case the designated individual shall be deemed to be the covered service member's next of kin. All family members sharing the closest level of familial relationship to the covered service member are considered the covered service member's next of kin, unless the covered service member has specifically designated an individual as his/her next of kin for Military Caregiver Leave purposes. While an eligible employee may care for more than one (1) seriously injured or ill covered service member at the same time, the employee may not take more than twenty-six (26) work weeks of leave during each "single 12-month period."

Military Caregiver Leave is a "per-service member, per-injury" entitlement. Therefore, an eligible employee may take twenty-six (26) work weeks of leave to care for one (1) covered service member in a "single 12-month period," and then take another twenty-six (26) work weeks of leave in a different "single 12-month period" to care for another covered service member or to care for the same service member with a subsequent serious injury or illness (e.g., if the service member is returned to active duty and suffers another injury). Additionally, an eligible employee could take FMLA leave, after the end of the "single 12-month period" for Military Caregiver Leave, to care for a covered service member if the member is a qualifying family member under non-military FMLA and s/he has a serious health condition.

#### B. **Qualifying Exigency Leave**

Eligible employees may take up to twelve (12) weeks of unpaid FMLA leave for any of the following qualifying exigencies that are related to the fact that the employee's spouse, son, daughter or parent is on covered active duty, or has been notified of an impending call or order to covered active duty in the Armed Forces:

1. Issues arising from a qualifying family member's **short-notice deployment** (i.e., deployment on seven (7) or less calendar days of notice) for a period of seven (7) days from the date of notification.
2. **Military events and related activities**, such as official ceremonies, programs, or events sponsored by the military, **or**

family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross related to a qualifying family member's covered active duty or call to covered active duty status.

3. Certain **childcare and related activities** arising from a qualifying family member's covered active duty or call to covered active duty status, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member (this does not include providing child care on a routine, regular or everyday basis).
4. Making or updating **financial and legal arrangements** to address a qualifying family member's absence (e.g., preparing and executing financial and healthcare power of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System, obtaining military identification cards, or preparing or updating a will or living trust).
5. Attending **counseling** provided by someone other than a healthcare provider for oneself, the qualifying family member, or the child of the qualifying family member, the need for which arises from the qualifying family member's covered active duty or call to covered active duty status.
6. Taking up to **five (5)** days of leave to spend time with a qualifying family member who is on short-term, temporary, **rest and recuperation** leave during the deployment.
7. Attending to certain **post-deployment activities**, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of ninety (90) days following the termination of the qualifying family member's covered active duty status, and addressing issues arising from the death of a qualifying family member.
8. Any other event that the employee and the Board agree is a

qualifying exigency.

The term "qualifying family member" for purposes of Qualified Exigency Leave means a staff member's spouse, son, daughter or parent.

The term "covered active duty" for purposes of Qualified Exigency Leave means duty during deployment with the Armed Forces to a foreign country.

The term "son or daughter" means the employee's biological, adopted, or foster child, stepchild, legal ward, or child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age. Similarly, the term "parent" means a biological, adoptive, step, or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. (The term does not include parents "in-law.")

### **Eligible Employees**

Only eligible employees are entitled to take FMLA leave. An **eligible employee** is one who:

- Works for a covered employer;
- Has worked for the employer for at least 12 months
- Has at least 1,250 hours of service for the employer during the 12 month period immediately preceding the leave; and
- Works at a location where the employer has at least 50 employees within 75 miles.

The 12 months of employment do not have to be consecutive. That means any time previously worked for the same employer (including seasonal work) could, in most cases, be used to meet the 12-month requirement. If the employee has a break in service that lasts seven years or more, the time worked prior to the break will not count unless the break is due to service covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA), or there is a written agreement, including a collective bargaining agreement, outlining the employer's intention to rehire the employee after the break in service.

### **Employee Request for FMLA Leave**

While eligible employees are not required to expressly request unpaid FMLA leave, it is requested that eligible employees who seek an unpaid FMLA leave for any of the approved reasons complete and submit to the Executive Director a written request for FMLA leave using the following three (3) forms:

- 1) WH-380-E (Certification of Health Care Provider for Employee's Serious Health Condition)
- 2) Family Medical Leave Act Request for Leave Form
- 3) Notice to Employees Regarding Request for Family and Medical Leave

Employees who take leave for the employee's own serious health condition, prior to returning to work, must submit to the Executive Director a "Fitness-for-Duty Certification". Again, the employee will need to have executed and provided to his/her Health Care Provider a HIPAA-compliant form.

Eligible employees who apply for FMLA leave for Qualifying Exigency Leave must submit DOL Form WH-384; "Certification of Qualifying Exigency for Military Family Leave". Specifically, the first time the employee requests Qualifying Exigency Leave, the employee must provide a copy of the qualifying family member's covered active duty orders or other documentation issued by the military that indicates that the qualifying family member is on covered active duty or call to covered active duty status, and the dates of the qualifying family member's covered active duty service. Additionally, each time that the employee requests leave for one of the above-listed qualifying exigencies, the employee must certify the exigency necessitating leave. Such certification supporting leave for a qualifying exigency includes:

- appropriate facts supporting the need for leave, including any available written documentation supporting the request;
- the date on which the qualifying exigency commenced or will commence and the end date;
- where leave will be needed on an intermittent basis, the frequency and duration of the qualifying exigency; and
- appropriate contact information if the exigency involves meeting with a third party.

Employees are advised that if the qualifying exigency involves a meeting with a third party, the Executive Director may verify the schedule and purpose of the meeting with the third party. Also, the Executive Director may contact the appropriate unit of the Department of Defense to confirm that the qualifying family member is on covered active duty or call to covered active duty status.

All of the certifications identified above must be submitted by the employee within fifteen (15) calendar days after the Cooperative provides the employee with the applicable DOL Form unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

### **Light Duty**

Time spent performing "light duty" work does not count against an employee's FMLA leave entitlement.

### **Cooperative Notices to Employee**

WH-Forms are available on the U.S. Department of Labor Website: [www.dol.gov](http://www.dol.gov)

SSJCSS Forms may be requested by calling the SSJCSS Human Resources Office

If the information included in the Employees Rights and Responsibilities Notice changes, the Executive Director will inform the employee of such changes within five (5) business days of receipt of the employee's first notice of the need for FMLA leave subsequent to any change. The Human Resources Specialist is charged with responsively answering questions from employees concerning their rights and responsibilities.

If it is not possible to provide the number of hours, days or weeks that will be counted as FMLA leave (e.g., where the leave will be unscheduled), the Executive Director will provide this information upon request by the employee, but no more often than every thirty (30) days and only if leave was taken during the period. The notice of the amount of leave counted against the employee's FMLA entitlement may be oral or in writing. If such notice is oral, it shall be confirmed in writing, no later than the following payday that is at least one (1) week after the oral notice. Such notice may be in any form, including a notation on the employee's pay stub.

### **FMLA Leave and Mandatory Overtime**

Employees with proper medical certification may use FMLA leave in lieu of working required overtime hours. Thus, hours that an employee would have been required to work but for the taking of FMLA leave will be counted against the employee's FMLA entitlement.

### **Calculating the Amount of FMLA Leave Used by an Employee**

For purposes of determining the amount of FMLA leave used by an employee, the fact that a holiday may occur within the work week taken as FMLA has no effect; the week is counted as a week of FMLA leave. If, however, the employee is using FMLA leave in increments of less than one (1) week, the holiday will not count against the employee's FMLA leave entitlement unless the employee was otherwise scheduled and expected to work during the holiday. Similarly, when an employee is not scheduled to work during winter, spring or summer vacation (i.e., during a period when some or all employees are not expected to work for one (1) or more weeks), the days the employee is not scheduled to work shall not count against the employee's FMLA leave entitlement.

When an employee takes FMLA leave on an intermittent or reduced schedule leave basis, the leave shall be accounted for by using an increment no greater than the shortest period of time that the Cooperative uses to account for use of other forms of leave provided that it is not greater than one (1) hour and provided that the employee's FMLA leave entitlement is not reduced by more than the amount of leave actually taken.

### **Maintenance of Employee Benefits**

The same group health plan benefits provided to an employee prior to taking FMLA leave shall be maintained during the FMLA leave (e.g., if family member coverage is provided to an employee, family member coverage shall be maintained during the FMLA leave). Similarly, benefit coverage during FMLA leave for medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, etc., shall be maintained during leave if provided in the Cooperative's group health plan, including a supplement to a group plan.

If an employee chooses not to retain group health plan coverage during FMLA leave, the employee will be reinstated, upon return from leave, on the same terms as prior to taking the leave, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc.

### **FMLA Recordkeeping Requirements**

The Human Resources Specialist is responsible for making, keeping, and preserving all relevant records pertaining to the Governing Board's obligations under the FMLA in accordance with the recordkeeping requirements of Section 11(c) of the Fair Labor Standards Act (FLSA) and in accordance with the final regulations applicable to the FMLA. Specifically, the Human Resources Specialist is charged with keeping/preserving the records identified below in accordance with the Cooperative's Records Retention Schedule, and under no circumstances shall said records be kept for less than three (3) years. The records shall be available for inspection, copying, and transcription by representatives of the Department of Labor upon request.

The Human Resources Specialist shall maintain records that disclose the following:

- A. Basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.
- B. Dates FMLA leave is taken by FMLA eligible employees (e.g., available from time records, requests for leave, etc., if so designated). Leave must be designated in records as FMLA leave; leave so designated may not include leave required under State law or a Board plan which is not also covered by FMLA.
- C. If FMLA leave is taken by eligible employees in increments of less than one (1) full day, the hours of the leave.
- D. Copies of employee notices of leave furnished to the Cooperative under FMLA, if in writing, and copies of all written notices given to employees as required under the FMLA and its implementing regulations (see 29 C.F.R. Section 825.300(b) through (c)). Copies may be maintained in employee personnel files.
- E. Any documents (including written and electronic records) describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leaves.
- F. Premium payments of employee benefits.

- G. Records of any dispute between the Cooperative and an eligible employee regarding designation of leave as FMLA leave, including any written statement from the Executive Director or employee of the reasons for the designation and for the disagreement.

Records and documents relating to certifications, recertification or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if the ADA, as amended, is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements (see 29 C.F.R. 1630.14(c)(1)), except that:

- A. supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
- B. first aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
- C. government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.