

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

The District will provide leave to eligible employees consistent with the FMLA. Eligible employees are entitled up to 12 workweeks of unpaid family and medical leave in any 12-month period. The District will continue to pay the District's share of the employee's health benefits during the leave. In addition, the District will restore the employee to the same or a similar position after the termination of the leave in accordance with District policy.

The following guidelines will be used to provide a fair and systematic procedure by which eligible employees may take unpaid leaves of absence for family and medical reasons.

### **Eligibility requirements**

To qualify for leave under this policy, an employee must have been employed by the District for at least 12 months as of the date on which the requested leave will commence. In addition, the employee must have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

### **Leave entitlement**

An eligible employee is entitled to a total of 12 workweeks of unpaid leave during any fiscal year (July 1 through June 30):

1. For the birth of a son or daughter of the employee;
2. For the placement of a child with the employee for adoption or foster care ("foster care" is 24-hour care for children in substitution for and away from, their parents or guardian, by or with the agreement of the state or pursuant to a judicial determination);
3. To care for a spouse, son, daughter, or parent of the employee if such spouse, son, daughter, or parent has a serious health condition; "son or daughter" means a biological, adopted, or foster child, stepchild, legal ward, or "child" of an employee standing in loco parentis when the child is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability (persons who are "in loco parentis" include those with day-to-day responsibilities to care for and financially support a child or, in the case of a parent, a person who had such responsibility for the employee when the employee was a child); and/or
4. Because of a serious health condition of the employee that renders the employee unable to perform the essential functions of the position.

An eligible employee who is the spouse, son, daughter, parent or next of kin of a "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" may be permitted to take up to 26 workweeks of leave to care for this individual.

An eligible employee who desires to take leave under this policy will request such leave from his/her immediate supervisor, who will then notify the Superintendent or his/her designee of the request. Requests will be responded to in a timely manner.

The entitlement to leave for the birth or placement of a child for adoption or foster care expires 12 months after the date of such birth or placement. If circumstances require, an employee may take family leave prior to the birth or placement of a child for prenatal care or to prepare for placement, e.g., to attend counseling sessions or appear in court.

A "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves:

1. Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice, or residential medical care facility; or
2. Continuing treatment by a health care provider.

A serious health condition involving "continuing treatment by a health care provider" includes one or more of the following:

1. 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:
  - a. Treatment two or more times 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 orders of, or on referral by, a health care provider; or
  - b. Treatment by a health care provider on at least one occasion which 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 such incapacity due to a chronic serious health condition; a chronic serious health condition is one which:
  - a. 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;
  - b. Continues over an extended period of time (including recurring episodes of a single underlying condition);

- c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);
4. 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); and
5. Any period of absence to receive multiple treatments 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, severe arthritis, kidney disease.

A "health care provider" is:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices;
2. A podiatrist, dentist, clinical psychologist, optometrist, or chiropractor (limited to treatment of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist), authorized to practice in the state and performing within the scope of his/her practice as defined under state law;
3. A nurse practitioner or nurse midwife who is authorized to practice under state law and who is performing within the scope of his/her practice as defined under state law; and
4. A Christian science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts.

### **Intermittent or reduced schedule leave**

1. "Intermittent leave" is leave taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time, and may include leave periods from one hour or more to several weeks.
2. A "reduced schedule leave" is a leave schedule that reduces an employee's usual number of working hours per workweek, hours per work day, or days per workweek.
3. Leave for the birth or placement of a child will not be taken intermittently or on a reduced schedule without the written consent of the Superintendent or his/her designee, who will consult with the employee's immediate supervisor before granting such consent.

4. Leave to care for a seriously ill spouse, son, daughter, or parent, or for the employee's own serious health condition may be taken intermittently or on a reduced schedule only when medically necessary.
5. If an employee requests intermittent or reduced schedule leave that is foreseeable based on planned medical treatment, the Superintendent or his/her designee may require such employee to transfer temporarily to an available alternative position for which the employee is qualified that (1) has equivalent pay and benefits and (2) better accommodates recurring periods of leave, or family leave (see below: "Intermittent or Reduced Schedule Leave for Instructional Employees").

### **Substitution of paid leave**

Except as may be otherwise determined by the District when an employee is eligible by workers' compensation, the District requires an employee to use accrued paid annual, sick and/or personal leave time for any unpaid portion of FMLA leave. Such accrued leave will be substituted by the District for part or all of an employee's FMLA leave without limitation. Thus, the District requires an employee to use any accrued paid leave before taking unpaid leave, and the District counts both towards fulfillment of the 12-week FMLA total.

### **Foreseeable leave/notice required**

1. When the necessity for leave for the birth or placement of a child is foreseeable based on an expected birth or placement, the employee must provide at least 30 days written notice to his/her immediate supervisor of the anticipated timing and duration of the employee's leave. The failure to provide such notice with no reasonable excuse for the delay may result in the denial of a request for leave until 30 days after the employee provides notice.
2. If the date of the birth or placement requires leave to begin in less than 30 days, the employee must provide as much notice as is practicable.
3. When leave to care for a seriously ill spouse, child, or parent, or for an employee's own serious health condition, is foreseeable based on planned medical treatment, the employee:
  - a. Must make a reasonable effort to schedule the treatment so as not to disrupt unduly the District's operations, subject to the approval of the health care provider;
  - b. Must provide at least 30 days written notice to his/her immediate supervisor of the anticipated timing and duration of the employee's leave, except that if the date of treatment requires leave to begin in less than 30 days, the employee must provide as much notice as practicable.

## **Spouses employed by the District**

If a husband and wife entitled to leave are employed by the District and both take leave for the birth or placement of a child or to care for a seriously ill parent, the aggregate number of workweeks of leave to which both may be entitled may not exceed 12 workweeks during any 12-month period.

### **Certification**

1. A request for leave to care for a seriously ill spouse, child, or parent, or for the employee's own serious health condition must be supported by a certification issued by the health care provider of the employee or family member. The District has forms available which an employee may use for this purpose.
2. The certification must contain the following information:
  - a. The date on which the serious health condition commenced;
  - b. The probable duration of the condition;
  - c. The appropriate medical facts regarding the condition;
  - d. For leave taken to care for a seriously ill spouse, child, or parent, a statement that the employee is needed to care for the spouse, child, or parent and an estimate of the amount of time the employee will be needed for that purpose;
  - e. For leave taken due to an employee's serious health condition, a statement that the employee is unable to perform the essential functions of the position;
  - f. For intermittent or reduced schedule leave for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;
  - g. For intermittent or reduced schedule leave for an employee's serious health condition, the statement of the medical necessity for the intermittent or reduced schedule leave and the expected duration of such leave;
  - h. For intermittent or reduced schedule leave to care for a seriously ill spouse, child, or parent, a statement (1) that the employee's intermittent or reduced schedule is necessary for the care of the spouse, child, or parent or will assist in their recovery and (2) concerning the expected duration and schedule of the intermittent or reduced schedule leave.
3. If the Superintendent or his/her designee or the employee's immediate supervisor has reason to doubt the validity of a certification, he/she may require, at the District's

expense, the employee obtain the opinion of a second health care provider designated or approved by the Superintendent or his/her designee.

4. A health care provider designated or approved by the Superintendent or his/her designee will not be one who is employed on a regular basis by the District.
5. If the first and second opinions of the health care providers are conflicting, the Superintendent or his/her designee may require the employee to obtain a third opinion at the District's expense. The employee and the Superintendent or his/her designee must jointly select the third health care provider from a health care provider other than a Christian Science practitioner.
6. The Superintendent or his/her designee may require subsequent recertification on a reasonable basis, but no more often than every 30 days unless:
  - a. The employee requests an extension of leave;
  - b. The circumstances described by the original certification have changed significantly;  
or
  - c. The Superintendent or his/her designee receives information which casts doubt on the continuing validity of the prior certification.

## **Employment and benefits protections**

1. Restoration to position.
  - a. Any employee who takes leave for the intended purpose of the leave will be entitled on return from leave to be restored to the position of employment held by the employee when the leave commenced or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.
  - b. The taking of leave will not result in the loss of employment benefits accrued prior to the date on which leave commenced.
  - c. A restored employee is not entitled to the accrual of seniority or employment benefits during the period of leave or to any right, benefit, or position of employment other than that to which the employee would have been entitled had the leave not been taken.
  - d. As a condition of restoration for an employee who has taken leave due to his/her own serious health condition, the employee must provide a certification from the health care provider stating that the employee is able to resume work. Until such a certification is provided, reinstatement will be denied.
  - e. An employee on leave must report periodically to his or her immediate supervisor on his or her status and intention to return to work.

2. Exemption of certain highly compensated employees.
  - a. The Superintendent or his/her designee may deny restoration to a salaried employee who is among the highest paid ten percent of District employees if:
    - (1) Such denial is necessary to prevent substantial and grievous economic injury to the operations of the District;
    - (2) The Superintendent or his/her designee notifies the employee of the intent to deny restoration at the time he/she determines such injury would occur; and
    - (3) If leave has commenced, the employee decides not to return to work.
  - b. If the Superintendent or his/her designee believes that reinstatement may be denied to a key employee, the Superintendent or his/her designee must give written notice to the employee at the time leave is requested that he or she qualifies as a key employee. In addition, the employee must be fully informed of the potential consequences with respect to reinstatement and maintenance of health benefits if it is determined that substantial and grievous economic injury will result from the employee's reinstatement.
  - c. As soon as the Superintendent or his/her designee determines that such an injury will result from reinstatement, he/she must again notify the employee in writing of this determination, and advise the employee that the District cannot deny leave but that it intends to deny restoration to employment on completion of the leave. This notice must be delivered in person or by certified mail. It also must explain the basis for the finding that substantial and grievous economic injury will result and must provide the employee a reasonable time in which to return to work.
  - d. If the employee elects to remain on leave, the District will continue to maintain his/her health benefits until the employee gives notice that he or she no longer wishes to return to work or until reinstatement is actually denied at the conclusion of the leave.
  - e. Once the key employee's leave has expired, he/she is entitled to request reinstatement. The Superintendent or his/her designee must then determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at that time. If it is determined that such an injury will result, the Superintendent or his/her designee shall notify the employee in writing of the denial of restoration. This notice must be delivered in person or by certified mail.
3. Maintenance of health benefits.
  - a. During an employee's leave, the District will maintain coverage under any group health plan at the level and under the conditions that would have been provided if the employee had continued in employment continuously for the duration of the leave.

- b. The employee must continue to pay his/her portion of all insurance premiums to maintain coverage. If an employee's premium payment is more than 30 days late, the District may discontinue coverage of the employee under the policy. The District will provide 15 days advance notice before cancellation of coverage.
- c. If coverage lapses because an employee has not made premium payments, upon the employee's return from leave, the District will restore the employee to coverage and benefits equivalent to those the employee would have had if leave had not been taken and the premium payments had not been missed.
- d. If the District continues coverage under the policy by paying the employee's portion of the premiums, the District is entitled to recover all such payments. Further, the District may recover from an employee its share of health plan premiums paid during a period of leave under this policy if the employee fails to return to work at the expiration of the leave, unless the reason for the employee's failure to return is due to the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control. If an employee fails to return because of the continuation, recurrence, or onset of a serious health condition, the employee must provide a certification of the employee's or family member's serious health condition. The District also will not seek recovery for its share of premiums for any portion of paid leave substituted or used by an employee.

### **Intermittent or reduced schedule leave for instructional employees**

If an eligible staff member employed principally in an instructional capacity requests leave to care for a seriously ill spouse, child, or parent, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for greater than 20 percent of the total number of working days in the period during which the leave would extend, the Superintendent or his/her designee, in consultation with the principal, will require that the employee elect either:

1. To take leave for periods of a particular duration, not to exceed the duration of the planned medical treatments or
2. To transfer temporarily to an available alternative position for which the employee is qualified that has equivalent pay and benefits and which better accommodates recurring periods of leave.

### **Rules applicable to periods near the conclusion of an academic term for employees employed principally in an instructional capacity**

1. If an eligible staff member employed principally in an instructional capacity begins leave more than five weeks prior to the end of an academic semester, the Superintendent or his/her designee, in consultation with the principal, may require the employee to continue taking leave until the end of the semester if:



- a. The leave is of at least three weeks duration and
  - b. The return would occur during the three-week period before the end of the term.
2. If an eligible staff member employed principally in an instructional capacity begins leave for the birth or placement of a child or to care for a seriously ill child, spouse, or parent during the period that commences five weeks prior to the end of an academic semester, the Superintendent or his/her designee, in consultation with the principal, may require the employee to remain on leave until the end of the semester if:
  - a. The leave is greater than two weeks and
  - b. The return to employment would occur during the two-week period before the end of the term.
3. If an eligible staff member employed principally in an instructional capacity begins leave for the birth or placement of a child or to care for a seriously ill spouse, child, or parent during the period that commences three weeks prior to the end of an academic semester and the duration of the leave is greater than five working days, the Superintendent or his/her designee, in consultation with the school principal, may require the employee to continue taking leave until the end of the term.
4. If the District requires an employee to remain on leave until the end of an academic term and this results in the employee taking more leave than is necessary to resolve the condition which necessitated the leave, the additional leave time required to be taken will not be deducted from the employee's total available FMLA leave. The employee, however, will continue during this time to be entitled to the maintenance of health benefits and job restoration in accordance with this administrative rule.

*Legal references:*

*Federal.*

*United States Code P.L. 103-3 and 29 CFR Part 825 – The Family and Medical Leave Act of 1993.*

*State.*

*S.C. Code § 8-7-20 – Requires granting of military leave, without pay up to five years.*

*S.C. Code Section 8-7-90 – Requires 15 days per year of leave with pay for members of National Guard and Reserve Units of the various Armed Forces. Also grants and additional 30 days of leave with pay in emergency situations.*

*S.C. Code § 14-1-190 – Compensation received for jury duty deemed to be expense money.*

*S.C. Code § 14-7-845 – Relating to optional postponement of jury service for students and employees.*

*S.C. Code § 25-1-2250 – Employees entitled to leave with pay when serving in National Guard.*

*S.C. Code § 59-1-400 – Sick leave for public school district employees.*