

### **3.07**

## **Family and Medical Leave Act Policy**

It is the policy of Franklin Local School District to comply with the Family and Medical Leave Act of 1993 in its employment practices. This policy is implemented through the following procedures. The purpose of these procedures is to establish guidelines for leaves taken by employees under the Federal Family and Medical Leave Act of 1993 (FMLA).

### **I. DEFINITIONS**

- A. "Teacher" or "Instructional Employee" means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily non-instructional employees.
- B. "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 as defined below. This term does not include parents "in law."
- C. "Spouse" means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the marriage occurred, including common law marriage in States where it is recognized.
- D. "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 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.
- E. "Son or daughter of a covered servicemember" means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.
- F. "Son or daughter on covered active duty or call to covered active duty status" means the employee's biological, adopted, or foster child, stepchild, legal ward, or a 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.

### **II. ELIGIBILITY**

An employee is eligible for FMLA leave if he or she (a) has been employed by the School District for at least fifty-two (52) weeks; and (b) has at least 1,250 actual hours of service (i.e., actual work hours) during the twelve (12) months immediately preceding the start of a leave.

Full-time classroom teachers are deemed to meet the 1,250 hours of service requirement.

### **III. FMLA LEAVE ENTITLEMENTS**

Leaves under the FMLA may be taken for any of the following reasons:

- For incapacity due to pregnancy, prenatal care, or child birth, and to care for the employee's child after birth (leave must be taken within 12 months after birth);
- For adoption and foster care, and to care for the employee's child after placement of a child with the employee by adoption or foster care (leave must be taken within 12 months after placement);
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition;
- For the employee's serious health condition that makes the employee unable to perform one or more essential functions of his or her current position.
- Because of a qualifying exigency arising out of the fact that the employee's spouse, son or daughter, or parent is on (or has been notified of an impending call to) covered active duty in the Armed Forces (including a member of the National Guard or Reserves). Qualifying exigencies may include:
  - (a) Short-notice deployment activities (if a member receives seven or fewer calendar days notice prior to the date of deployment);
  - (b) Military events and related activities;
  - (c) Childcare and school activities;
  - (d) Financial and legal arrangements;
  - (e) Counseling activities;
  - (f) Rest and recuperation activities;
  - (g) Post-deployment activities; and/or
  - (h) Additional activities.
- To care for the employee's spouse, parent, son or daughter, or next of kin who is a covered servicemember with a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank or rating. A covered servicemember includes (1) a member of the Armed Forces (including a member of the National Guard or Reserves) (a) who is undergoing medical treatment, recuperation, or therapy; (b) is in outpatient status; or (c) is on the temporary disability retired list for a serious injury or illness, and (2) a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness who was a member of the Armed Forces at any time during the five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy.

### **IV. LENGTH OF LEAVE**

Except in the case of leave to care for a covered servicemember with a serious injury or illness, an eligible employee is entitled to take up to a maximum of twelve (12) workweeks of FMLA leave during any 12-month entitlement period. An eligible

employee is entitled to up to 26 workweeks of leave to care for a covered servicemember with a serious injury or illness during a single 12-month period. The 12-month entitlement period for family or medical leave is measured as a rolling 12-month period measured backward from the date of any FMLA Leave Usage.

If leave is taken for more than one of the qualifying reasons listed above, the employee is entitled to a combined total of 12 workweeks of leave during any 12-month entitlement period unless one of the reasons is to care for a covered servicemember with a serious injury or illness. If one of the reasons is to care for a covered servicemember with a serious injury or illness, then the employee is entitled to a combined total of 26 workweeks of leave during the single 12-month period, but is still limited to a combined maximum of 12 workweeks for leave taken for any reason other than to care for a covered servicemember with a serious injury or illness.

## **V. TYPES OF LEAVE AND CONDITIONS FOR USE OF LEAVE**

### **A. Block of Time, Intermittent and Reduced Schedule Leave**

An employee may take FMLA leave in a block of time, on an intermittent basis, or on a reduced schedule basis, as explained below.

1. “Block” FMLA leave is leave for a continuous period of time. Such leave may be taken for any of the reasons permitted by the FMLA.
2. “Intermittent” leave means leave taken in separate periods of time rather than for one continuous period of time and may include leave of periods from an hour to a full day or more. Examples of intermittent leave include leave taken on an occasional/as needed basis for medical appointments or leave taken for a partial day or several days at a time over a period of months for treatment episodic flare-ups of a chronic condition.
3. “Reduced Schedule” leave is leave that reduces the employee's usual number of hours per workday or workweek for some period of time. For example, an employee may request leave one day per week over a period of time or to work part-time for a number of weeks for their own serious health condition or so the employee can assist in the care of a parent with a serious health condition.

Intermittent or reduced schedule leave can only be taken when medically necessary for an employee's or covered family member's serious health condition, or because of a covered servicemember's serious illness or injury, and the medical need can best be accommodated through an intermittent or reduced schedule leave. Such leave may be taken:

1. When necessary for planned or unanticipated medical treatment, or for treatment that is required by a health care provider periodically (e.g., leave taken for chemotherapy or for prenatal examinations);
2. For recovery from a serious health condition or a covered servicemember's serious injury or illness,

3. To provide care or psychological comfort to a covered family member or a covered servicemember;
4. Where the employee or covered family member is incapacitated from performing the essential functions of the position because of a chronic serious health condition, or because of a serious injury or illness of a covered servicemember; or
5. Due to a qualifying exigency.

**B. Scheduling Planned Medical Treatment**

When planning medical treatment for foreseeable FMLA leave, an employee must consult with his or her supervisor and make a reasonable effort to schedule the treatment so as not to disrupt unduly the School District's operations, subject to the approval of the health care provider. Ordinarily, the employee should consult with the supervisor prior to scheduling the treatment in order to work out treatment schedule which best suits the needs of the School District and the employee. The School District may, for justifiable cause, require an employee to attempt to reschedule treatment, subject to the approval of the health care provider as to any modification of the treatment schedule.

**C. Temporary Transfer**

If foreseeable intermittent or reduced schedule leave is medically required based upon planned medical treatment of the employee or a family member, including during a period of recovery from a serious health condition, or if the School District agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, the School District may temporarily transfer the employee to another job with equivalent pay and benefits that better accommodates the type of leave requested.

Also, special arrangements may be required of any instructional employee who needs to take intermittent or reduced-schedule leave which will involve absence for more than twenty (20) percent of the work days in the period over which the leave will extend (for example, more than five days over a five-week period).

**D. Both Spouses Working for The School District**

If both spouses are employees of the School District and request leave for the birth, placement of a healthy child by adoption or for foster care, or to care for a parent with a serious health condition, they only will be entitled to a maximum combined total leave equal to twelve (12) weeks in any 12-month entitlement period. If either spouse (or both) uses a portion of the total 12-week entitlement for one such purpose, each is still entitled to the difference between the amount he or she has taken individually and the 12-week entitlement for FMLA leave for other FMLA purposes during any 12-month entitlement period. However, a husband and wife may each take up to twelve (12) weeks of FMLA leave for other FMLA-qualifying reasons, such as for their own serious health condition

or if needed to care for their newborn, adopted child or foster care child with a serious health condition.

**E. Leave Taken by Instructional Employees Near the End Of An Academic Term**

1. If a leave taken by an instructional employee for any reason begins more than five (5) weeks before the end of an academic term, the School District may require that employee to continue the leave until the end of the academic term if the leave will last at least three (3) weeks and the employee would return to work during the three-week period before the end of the academic term.
2. If the employee begins a leave during the five-week period preceding the end of an academic term for a reason other than the employee's own serious health condition, the School District may require the employee to continue taking leave until the end of the academic term if the leave will last more than two (2) weeks and the employee would return to work during the two-week period before the end of the academic term.
3. If the employee begins a leave during the three-week period preceding the end of an academic term for a reason other than the employee's own serious health condition, the School District may require the employee to continue taking leave until the end of the academic term if the leave will last more than five (5) working days.

**F. Procedures for Requesting FMLA Leave**

An employee must inform his or her supervisor of the need for a family or medical leave at least thirty (30) days before the leave is to begin if the need for the leave is foreseeable based upon an expected birth, placement for adoption for foster care, planned medical treatment for the employee's or family member's serious health condition, or the planned medical treatment for a serious injury or illness of a covered servicemember. If 30 days notice is not practicable, then the employee must provide notice as soon as practicable under the circumstances, usually the same day or the next business day after the employee becomes aware of the need for FMLA leave. An employee must provide notice as soon as practicable if the foreseeable leave is for a qualifying exigency. The employee's notice should be sufficient to make the school district aware that the employee needs FMLA-qualifying leave and of the anticipated timing and duration of the leave. When the approximate timing of the need for leave is not foreseeable, an employee must inform his or her supervisor as soon as practicable under the circumstances.

1. Other Employee Notice Obligations

The employee should follow the School District's normal procedures for providing notice of the need for leave. The employee must provide sufficient information to make the supervisor aware that the employee needs FMLA-qualifying leave, and must inform the supervisor of the anticipated timing and duration of the leave. If

the requested leave is for a reason for which leave was previously designated as FMLA leave by the School District, the employee must specifically reference the reason for the leave or the need for “FMLA” leave. In addition, an employee must inform his or her supervisor as soon as practicable if date(s) of scheduled leave change or are extended, or if the date(s) were initially unknown.

The supervisor must promptly (the same day) notify the School District’s Human Resources Department/FMLA Administrator that an employee has requested leave that may qualify under FMLA. Human Resources will coordinate the processing of all FMLA leave paperwork.

**G. Certifications Required**

For leaves taken for any FMLA-qualifying reason, an employee may be required to submit a completed certification form supporting the need for leave. The appropriate form will be provided to the employee within five business days after the employee gives notice of the need for leave. The employee must submit the completed form within fifteen (15) calendar days of receiving the request for the completed certification. If it is not practicable for the employee to provide the completed form within 15 calendar days despite the employee’s diligent, good faith efforts, the employee must inform Human Resources/the FMLA Administrator of the reason for delay. FMLA-protected leave may be delayed or denied if the employee does not provide a complete and sufficient certification as required.

**H. Substitution of Paid Leave**

An employee must “substitute” any accrued paid sick leave for any unpaid portion of medical leave taken for employee's own serious health condition (including pregnancy/maternity leave). To substitute simply means that the unpaid FMLA leave and paid leave run concurrently. In addition, an employee must substitute accrued paid personal leave and vacation for any unpaid portions of FMLA leave taken for any reason. Where the leave is for the employee's own serious health condition, accrued paid sick leave will be substituted for unpaid portions of FMLA leave prior to the substitution of accrued paid personal leave or vacation. The use of accrued paid leave may end when the employee becomes eligible for disability insurance compensation, or workers’ compensation payments, if applicable. Paid leave will be substituted after any period of disability insurance compensation or workers’ compensation payments if the employee remains on FMLA leave.

**I. Medical Insurance and Other Benefits During FMLA Leave**

During approved FMLA leaves of absence, an employee will be entitled to all job-related benefits during any portion of such leave for which the employee is utilizing available paid leave. During any paid portion of FMLA, any applicable health insurance premium payments will continue to be deducted from the employee’s paycheck as usual.

During any unpaid portion of FMLA leave, the School District will continue to pay its portion of medical insurance premiums for the period of unpaid FMLA leave (or can pay the entire amount and collect upon return). The employee must continue to pay his/her share of the premium and failure to do so may result in the loss of coverage, (or will be required to pay any outstanding balance upon return to work.) The employee will be responsible for his or her share of the monthly premium beginning the first of the month after FMLA leave becomes unpaid/during any portion of unpaid FMLA leave.

If the employee does not return to work after the expiration of the FMLA leave, the employee will be required to reimburse the School District for payment of medical insurance premiums during unpaid FMLA leave, unless the employee does not return because of a serious health condition or other circumstances beyond the employee's control.

Unused employment benefits, including seniority, accrued by the employee up to the day on which the leave begins will not be lost upon return to work.

#### **VI Outside Employment while on FMLA Leave**

An employee who is on family and medical leave for his or her own serious health condition may not engage in employment for any other employer or engage in self-employment while on leave.

#### **VII Return to Work After FMLA Leave**

An employee who returns to work following the expiration of a family or medical leave is entitled to return to the job held prior to the leave or to an equivalent position with equivalent pay and benefits. If an employee takes leave (except on an intermittent or reduced-schedule basis) for his or her own serious health condition, in order to return to work the employee may be required to provide a completed fitness-for-duty certification form, which certifies that the health condition which created the need for the leave no longer renders the employee unable to perform the essential functions of the job. If such certification is required but not received, the employee's return to work may be delayed until the certification is provided.

Policy Adopted:

Legal References:

- Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.
- Federal Regulations, 29 C.F.R. Part 825, as amended.