

Federally Mandated Family And Medical Leave

- I. **Calculation of the 12-Month Period** - The 12-month period during which the twelve (12) week leave entitlement occurs shall be a "rolling" 12-month period measured backward from the date that the employee uses any leave counted against the leave entitlement under this policy.

- II. **Advanced Notice**
 - A. Leave based upon planned medical treatment of the employee or of the employee's spouse, child or parent: the employee is responsible to schedule planned medical treatment so as not to unduly disrupt the operation of the employer (subject to approval of the health care provider of the patient). The employee shall provide at least thirty (30) days notice prior to the date the leave is to begin or if this is not possible, notice as soon as practicable.

 - B. Leave based upon birth, adoption, foster placement: where the leave is foreseeable, the employee must provide at least thirty (30) days notice prior to the date that the leave is to begin; if such notice is not capable of being given, then the employee shall give notice as soon as practicable.

 - C. Where good cause exists, the notice requirement may be waived, but otherwise the leave may be denied until the 30-day requirement is fulfilled.

- III. **Paid Leave to be Used First** - Under circumstances qualifying for leave under this policy, the District shall have the right (subject to any portion of a negotiated agreement with an association representing a group of employees to the contrary) to require that the employee take such paid leave in conjunction with the employee's FMLA leave. The use of any such paid leave will count against the employee's 12-week FMLA leave entitlement. When requesting the leave, the employee will be asked to indicate whether the leave is one which is covered under the FMLA.

- IV. **Medical Certifications** - Upon request, employees shall be required to submit medical certification from their treating health care provider supporting the leave request by an employee where the leave is based upon either the employee's own medical condition or that of a family member. Such certification shall be submitted within fifteen (15) calendar days of the request, unless it is impracticable to do so.

The employer shall advise the employee that such certification will be required when the employee requests the leave and shall also advise the employee of the consequences of failure to provide such a certification.

- A. Whenever a medical certification is found to be incomplete, the employer will notify the employee and provide the employee a reasonable opportunity to remedy the problem.
- B. Second and third opinions: if the employer has reason to doubt the validity of the medical certification provided by the employee's health care provider, it may require the employee to obtain a second opinion, at employer expense, from a health care provider selected by the employer so long as the doctor is not one employed on a regular basis by the employer. If the first and second opinions differ, the employer may require that a third medical opinion be obtained by the employee, again at employer expense, from a doctor selected in good faith by both parties. This third opinion shall control. The employer may require subsequent recertification on a reasonable basis.
- C. Medical certifications of fitness for duty: if the leave has been taken because of the employee's own serious illness, the District may require that a physician certify that the particular condition for which the leave was taken has been resolved and that the employee is fit to return to work.

V. Maintenance of Benefits While on Leave –

- A. Generally: the District shall maintain coverage under any group health or dental insurance plan for any employee who is granted an approved leave of absence under this policy for the duration of the leave. Such coverage shall be maintained at the same level and under the same conditions as coverage would have been provided if the employee were not on leave. The District reserves the right to seek reimbursement, as allowed by law, for any portion of this benefit actually paid for by the District in the event that an employee elects not to return to work.

Employees on unpaid leave do not accrue benefits, such as seniority or paid leave while on such leave.

When it becomes known to the District that an employee will not be returning to work, the period of FMLA leave is exhausted, or the employee terminates employment (for example, by failing to return from leave), whichever comes first, the District's obligation to

provide these benefits shall cease and the employee's right to continue under the District's group health insurance plans will be covered by COBRA.

- B. Payment of premiums while on leave: the employee shall remain responsible for payment of that portion of the health and dental insurance premium that is ordinarily paid by the employee while the employee is not on leave. In the case of paid leave, the employee's share of premiums shall be deducted from paychecks in the usual manner; where the leave is unpaid, the employee's portion of any premium shall be due by the first day of each month during the time of leave.
- C. Failure to make premium payments: if an employee on leave under this policy fails to make timely payment of the employee share of the insurance premium, the employee's insurance coverage for which payment has not been made will cease when payment is more than thirty (30) days late.
- D. Recovery of premiums paid by the District: where the employee fails to return to work after taking unpaid leave under this policy, the District shall be entitled to reimbursement for all premiums paid on the employee's behalf, unless the failure to return from leave is due to circumstances beyond the employee's control. Such circumstances shall include the continuation, recurrence or onset of a serious health condition which would entitle the employee to leave under the policy. (In such cases, the District may request a medical certification where applicable.) To the extent allowable by law, the District may reimburse itself for premiums paid by means of deduction from employee leave payoffs or other sums otherwise due the employee.

VI. Intermittent Leave and Leave on a Reduced Schedule

Such leave shall be available in the case of medically related leave for the care of a spouse, child or parent, or where the employee is unable to perform the functions of the position because of her/his own serious health condition. Such leave shall not be available without employer consent for birth, adoption or foster care of children. Calculation of intermittent leave and leave on a reduced schedule shall be by time actually taken, with only portions of a day counted against the leave entitlement where applicable.

- A. Possible temporary job transfer to accommodate intermittent leave or reduced leave schedule.
 - 1. Qualified non-teaching employees: in cases where intermittent or reduced leave is being requested by a non-teaching employee for a leave to care for a seriously ill family member or because of the employee's own serious health condition, if the leave is foreseeable based upon planned medical treatment, the District may require that the employee transfer temporarily to an available alternative position. However, the employee must be qualified for the position, the pay and benefits of the position must be equivalent to the employee's usual position and the temporary position must better accommodate recurring periods of leave than the employee's usual position.
 - 2. Teaching employees: in the case of intermittent or reduced leave requested by an employee whose principal function is to teach and instruct students (teachers, but not paraprofessionals or counselors), if the leave is foreseeable based on planned medical treatment and if the leave would involve the employee being absent for more than twenty (20) percent of the total working days during the period during which the leave would extend, then the District can require the employee to elect either: 1) to take the leave in a block that is not longer than the duration of the planned treatment rather than taking leave intermittently; or 2) to transfer temporarily to an available alternative position, provided that the employee is qualified for the position, the pay and benefits of the position are equivalent to the employee's usual position and the temporary position better accommodates recurring periods of leave than the employee's usual position.

VII. Return from Leave

- A. Generally - upon return from leave, employees shall be restored to an equivalent position though not necessarily the same position, so long as that position carries with it equal pay, benefits and conditions of employment.
- B. Return near the end of the semester by an employee whose principal function is to teach and instruct students (teachers, but not paraprofessionals or counselors):

1. In the case of a leave (of any kind under this policy) beginning more than five (5) weeks prior to the end of the academic term the District may require that the leave be taken to the end of the term, if:
 - a. The leave is of at least three (3) weeks duration; and
 - b. The employee would return during the three (3) weeks prior to the end of the term.
 2. In the case of a leave (of any kind under this policy other than sick leave based upon the employee's own illness) beginning less than five (5) weeks before the end of the term, the District may require that the leave be taken to the end of the term if:
 - a. The leave is greater than two (2) weeks long; and
 - b. The employee would return during the two (2) weeks prior to the end of the term.
 3. In the case of a leave (of any kind under this policy other than sick leave based upon the employee's own illness) beginning less than three (3) weeks before the end of the term, the employer may require that the leave be taken to the end of the term if the leave is greater than five (5) working days.
- C. Return from Leave Resulting in Substantial Economic Injury: if the employee on leave is a salaried employee and is among the highest paid ten (10) percent of District employees and keeping the job open for the employee would result in substantial economic injury to the District, the employee may be denied reinstatement. However, the District must notify the employee of the intent to deny reinstatement at the time economic hardship occurs and allow the employee to elect not to return to work after receiving the notice.

VIII. Definitions

- A. **SERIOUS HEALTH CONDITION** means an illness, injury, impairment or physical or mental condition that involves:
1. in-patient care (i.e. an overnight stay) in a hospital, hospice or residential medical care facility;

2. a period of incapacity requiring absence from work of more than three (3) days and involving continuing treatment by a health care provider;
 3. continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three (3) calendar days; or 4. for prenatal care.
- B. That **THE EMPLOYEE IS UNABLE TO PERFORM THE FUNCTIONS OF THE POSITION** means that the health care provider finds that the employee either cannot work at all or that the employee is unable to perform one or more of the essential functions of the position.
- C. That **THE EMPLOYEE IS NEEDED TO CARE FOR FAMILY MEMBER:**
1. the District believes that on the basis of information provided by the employee the necessary showing has been made; or
 2. that the health care provider has certified either that the employee is needed to care for a family member or that such care would be beneficial to the family member. It may also include situations in which the family member's need for care is intermittent and where an employee is required occasionally to fill in for regular care providers, or where a family member must make arrangements for changes in care.
- D. **INTERMITTENT LEAVE** means sporadic, interrupted or periodic leave for the same condition or situation in which leave days are spread out over a period of time on a nonconsecutive basis.
- E. **LEAVE ON A REDUCED SCHEDULE** means leave taken in which the number of hours worked per day is reduced.
- F. **PARENT** means biological parent of the employee or one who stood in loco parentis to an employee whether or not there was a legal relationship; i.e. anyone who took the place of the biological parent.
- G. **SON OR DAUGHTER** means biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis who is less than eighteen (18) years of age or is eighteen

(18) or more and incapable of self-care because of physical or mental disability.

H. **SPOUSE** means husband or wife.

I. **FOSTER CARE** means 24-hour care for children instead of, and away from, the child's parent or guardian, and requires involvement of the State of Colorado or other governmental entity.

IX. Posting/Notice to Employees

Building principals/administrators will post the U.S. Department of Labor poster explaining the FMLA's provisions in a location where it can be readily seen by employees and applicants for employment.

The FMLA Fact Sheet published by the U.S. Department of Labor, Wage and Hour Division, will be incorporated into all employee handbooks and provided directly to employees upon receiving notice of a need for FMLA leave.