

MILFORD SCHOOL DISTRICT
Milford, Delaware 19963
POLICY

4332

FAMILY AND MEDICAL LEAVE

The Milford School District Board of Education adopts the following policy in order to assure the Milford School District's ("the District") compliance with the Family and Medical Leave Act (FMLA). This Policy is intended to comply with the National Defense Authorization Act (NDAA) for FY 2008, the Family and Medical Leave Act of 1993 (the "FMLA") as amended, the Department of Labor's regulations implementing FMLA, and any applicable collective bargaining agreements, and shall be construed consistently with NDAA, FMLA and any applicable regulations. Unless otherwise required by law, the District will grant up to 12 weeks (26 weeks for certain service member family leave) of family and medical leave during any 12 month period to eligible employees.

I. ELIGIBILITY FOR LEAVE

A. FMLA applies to all employees who:

1. have worked a minimum of 1250 hours during the preceding twelve (12) month period, which may or may not be consecutive, but only to the extent required by law.; AND
2. have been employed by the District for at least a twelve month period.

Note: An employee returning from fulfilling his or her National Guard or Reserve military obligation shall be credited with the hours of service that would have been performed but for the period of military service in determining whether the employee worked the 1,250 hours of service.

B. EXCEPTION: The District may deny an employee job restoration if:

1. the employee is among the highest paid 10% of the District's employees;
2. denial of job restoration is necessary to prevent substantial and grievous economic injury to the operations of the District; AND
3. the District must notify the employee of the intent to deny him or her job restoration at the time the employee first requests leave.

II. REASONS FOR WHICH A LEAVE MAY BE GRANTED UNDER THE FMLA

A. To qualify for FMLA leave under this policy, the employee must use the leave for one of the following reasons:

- For birth of a son or daughter of the employee, and to care for such newborn child;
- For placement with the employee of a son or daughter for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent with a serious health condition;
- Because of a serious health condition that makes the employee unable to perform the functions of the employee's job;

- Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in the U.S. Armed Forces in support of a contingency operation; and

- To care for a covered servicemember with a serious injury or illness sustained in the line of duty if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

B. A "serious health condition" entitling an employee to FMLA leave means an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider as defined in the FMLA. Employees with questions about what illnesses are covered under this FMLA policy are encouraged to consult with the Director of Personnel.

C. "Parent" does not include parents-in-law.

D. "Spouses" includes only those recognized by the State of Delaware as being married. Thus, spouses of common law and same sex marriages would not qualify for leave, unless otherwise required by law.

E. The entitlement to a leave for the birth, adoption or placement of a child expires twelve (12) months from the birth, adoption or placement of the child.

F. Employees who are husbands and wives and both eligible District employees are limited to a single twelve (12) month period for childbirth, adoption or placement of a child. For other types of family and medical leave, each spouse is treated individually.

G. The District may ask for certification of the serious health condition. The District will use the U.S. Department of Labor Form WH-380, the *Certification of Health Care Provider*, to obtain this certification. The employee should respond to this request within 15 days or provide reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. The District will request medical certification in writing as part of the employer's response to an employee's request for leave.

The District reserves the right, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review. A sufficient medical certification must specify what functions of the employee's position the employee is unable to perform so that the District can then determine whether the employee is unable to perform one or more essential functions of the position.

The District reserves the right to ask for a second opinion from a physician or facility of their choice. If the District requests a second opinion, the cost of the second opinion will be paid for by the District. In order to resolve a discrepancy between the first and second opinions, a third opinion will be required which will be mutually agreed upon by the employee and the District. The cost of a third opinion will be paid by the District and will be the final determination of the employee's condition.

The District reserves its right to require subsequent recertifications on a reasonable basis.

III. LEAVE WHICH MAY BE GRANTED.

A. An employee may take FMLA leave in 12 consecutive weeks, or to the extent required by FMLA, may use the leave (i) intermittently or (ii) to reduce the workweek or workday, resulting in a reduced-hour schedule. In all cases other than leave to care for a covered servicemember with a serious injury or illness, FMLA leave may not exceed 12 weeks over a 12 month period. Except in the case of leave to care for a covered servicemember with a serious injury or illness, the District will measure the 12 month period as a rolling 12 month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes FMLA leave, the District will compute the amount of FMLA leave the employee has taken during the prior 12 months and subtract such leave from the 12 weeks of available leave time. The balance remaining is the amount the employee is entitled to take at that time.

An eligible employee's FMLA leave entitlement is limited to a total of 26 workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness. The "single 12-month period" in which the 26-weeks-of-leave-entitlement occurs is determined measured forward from the date an employee's first FMLA leave to care for the covered servicemember begins.

B. FMLA leave is without pay except as set forth in the following paragraph.

If the employee has accrued paid time off, such as sick or vacation time, the employee must use paid leave first and take the remainder of the 12 weeks as unpaid leave. Any paid time off will count towards the 12 weeks of FMLA entitlement. Accrual of vacation and sick time will be suspended during any unpaid leave.

C. Intermittent and reduced schedule leave

1. Intermittent leave or a reduced leave schedule may be taken only as required by or provided in the Act. Incremental leave must be taken in minimal increments equivalent to the minimal increments of time for personal, sick or vacation time, whichever of personal, sick, or vacation time is greatest. The amount of leave taken on an intermittent basis for employees who work a variable schedule or mandatory overtime will be calculated pursuant to the Act.

2. "Reduced Leave Schedule" means a leave schedule that reduces the usual number of hours per workweek or hours per workday of an employee.

3. Intermittent leave or leave on a reduced schedule is not available to employees if the leave is because of the birth, adoption, or foster care of a son or daughter, unless the District and the employee agree otherwise.

4. If intermittent leave or leave on a reduced schedule is requested for qualifying conditions, the District may require the employee to transfer temporarily to an available

alternative position, when the alternative position will offer the same pay and benefits. We may also transfer you to a part-time job with the same hourly rate of pay and benefits, provided you are not required to take more leave than is medically necessary.

IV. RIGHTS OF AN EMPLOYEE

A. The employee has the following rights under the FMLA:

1. The District is required to maintain health care coverage for the duration of the employee's leave at the level and under the conditions coverage would have been provided if the employee had continued in employment for the duration of the leave.
2. If the employee is using available paid time off, the cost of the employee portion of the employee's health coverage will continue to be deducted from their paycheck. In the event that the employee is on unpaid leave or is not receiving wages sufficient to cover the cost of the employee's portion of their health coverage, the employee will be responsible for paying their portion of the coverage to the District by the first of each month.
3. For elective payroll deductions, we will continue to make payroll deductions to cover premiums while the employee is on paid leave. If the employee is on unpaid leave, the employee must request that those policies be continued and must make premium payments to the District by the first of each month.
4. Failure to pay for the employee's portion of health insurance or elective payroll deductions defined above by the 1st of the month will result in those policies being cancelled.
5. If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family, or a circumstance beyond the employee's control, the District will require the employee to reimburse the District the amount it paid for the employee's health insurance premium and other deductions during the leave period.
6. The taking of leave shall not result in the employee losing any employment benefit accrued prior to the date on which the leave commenced, such as seniority or pension benefits.
7. The employee is not entitled to accrue any benefits, including seniority benefits, that would have occurred during a leave of absence.
8. The employee is not entitled to unemployment compensation benefits while on leave.

V. EMPLOYEE'S RESPONSIBILITIES

A. All employees requesting leave under this policy must provide written notice with an explanation of the reason(s) for the needed leave to the Personnel Director at least 30 days before the date the leave is to begin. The employees' immediate supervisor will advise the appropriate management staff and the Personnel Director. If 30 days notice cannot be given because of an unexpected change in circumstance, a medical emergency or the like, notice must be given with

as much lead time as possible, normally within one to two business days of when the employee becomes aware of the need for FMLA. If the employee fails to provide 30 days' notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least 30 days from the date the employer receives notice. When taking leave for any reason, the employee must explain the reason for the leave in order to allow the District to determine whether the leave qualifies as FMLA leave. If an employee fails to provide reason for the leave, the leave may be denied. While on leave, employees are requested to report periodically to the company regarding the status of the medical condition and their intent and expected date to return to work.

B. If an employee anticipates leave will be needed based on planned medical treatment, the employee must make a reasonable effort to schedule the medical treatment, subject to approval of the employee's health-care provider, in a manner that does not disrupt unduly District operations. 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 alternative position. Alternatively, the District may require the employee to delay the taking of leave until appropriate notice is provided.

C. For purposes of leave under the FMLA, all notifications to the District must be in writing and addressed to the Personnel Director.

VI. RETURN FROM LEAVE

A. Any employee that has taken FMLA leave because of the employee's own serious health condition must provide a medical certification from their treating healthcare provider which states the employee is able to resume work, before the employee will be permitted to return to work. We will provide you with the information that is required to be included in a certification. All relevant parts of certification must be completed. We may also request information under the Americans With Disabilities Act, and rely upon information we receive. An employee who takes FMLA leave must notify the District of the date they intend to return to work as soon the date is known.

B. Personnel replacing employees on Family Medical Leave shall be compensated at the daily substitute rate when the anticipated leave is for 10 days or less. Beginning on the 11th day of coverage the substitute will begin receiving the daily rate in effect as determined by the current state and local salary scales for a teaching position with a Bachelor's Degree and 0 years of experience. A substitute will not be placed on a temporary contract, at their actual per diem rate, unless they are expected to provide coverage in excess of 12 weeks (60 working days) and the coverage is expected to continue through the end of the current school year.

C. Upon returning from leave, the District must restore the employee to the position held by the employee when the leave commenced, or restore the employee to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. If the employee would have been laid off or otherwise terminated during the leave, the District is not required to restore the employee to his or her position or an equivalent. The employee only has

the same rights that he or she would have had if the employee had been working during the leave period.

VII. INSTRUCTIONAL EMPLOYEES

FMLA provides special rules affecting the taking of intermittent leave, leave on a reduced leave schedule, or leave near the end of an academic term (semester), by instructional employees. The District reserves its rights to limit, require, or modify leave according to FMLA provisions.

ADOPTED 12/19/94

AMENDED: 8/25/03; 2/25/08; 4/27/09