



ONONDAGA CENTRAL SCHOOLS

Book	Policy Manual
Section	6000 Personnel
Title	Family and Medical Leave Act
Code	6551
Status	Active
Adopted	January 5, 1998
Last Revised	January 24, 2017
Primary	Erie 1 BOCES
Secondary	Superintendent
Legal	May 25, 2016

The Board of Education, in accordance with the Family and Medical Leave Act of 1993 (as amended) (FMLA), gives "eligible" employees of the District the right to take **unpaid** leave for a period of up to 12 workweeks in a 12-month period as determined by the District.

The District uses a twelve (12) month period measured forward from the date of the employee's first FMLA leave usage as its method for calculating the leave year period for the commencement of the FMLA leave period. In certain cases, FMLA leave may be taken on an intermittent or reduced schedule basis rather than all at once.

Employees are "eligible" if they: (1) have been employed by the District for at least 12 months and; (2) for at least 1,250 hours of service during the previous 12-month period; and (3) are employed at a worksite where 50 employees within a 75-mile radius. However, a break in employment for military service (i.e., call to active duty) should not interrupt the twelve (12) month/1,250 hours of employment requirement and should be counted toward fulfilling this prerequisite. The law covers both full-time and part-time employees who meet the eligibility criteria above.

Basic FMLA Leave Entitlements

Qualified eligible employees may be granted leave for one or more of the following reasons:

- a) The birth of the employee's son or daughter and/or to care for the child during the first 12 months following birth;
- b) The placement of a son or daughter with the employee for adoption or foster care and/or to care for the child during the first 12 months following placement;
- d) To care for a spouse, minor child or parent who has a serious health condition as defined by the FMLA;
- e) To care for an adult child who is incapable of self-care due to a disability (regardless of date of the onset of disability) and has a "serious health condition" as defined by the FMLA; and/or
- f) A serious health condition of the employee, as defined by the FMLA, that prevents the employee from performing his or her job (including incapacity due to the employee's pregnancy, prenatal care or birth).

A "serious health condition" is an "illness, injury, impairment, or physical or mental condition" that requires (1) inpatient care or (2) continuing treatment:

1. "Inpatient Care" is an overnight stay in a hospital, hospice, or residential medical-care facility and any resulting period of incapacity or treatment.
2. "Continuing treatment" is defined as one of the following:

- a period of incapacity of more than 3 consecutive calendar days and (i) treatment 2 or more times by a health care provider within 30 days of the first day of incapacity (unless extenuating circumstances exist); or (ii) treatment by a health care provider which results in a regimen of continuing treatment;
- The first treatment visit must take place within 7 days of the first day of incapacity.
- Treatment by a health care provider also requires an in-person visit to the health care provider.
- a period of incapacity due to pregnancy or for prenatal care;
- a period of incapacity or treatment for a chronic serious health condition which requires periodic visits for treatment (at least 2 visits per year) by a health care provider;
- a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; or
- a period of absence to receive multiple treatments for (i) restorative surgery after an accident or injury or (ii) an injury or condition which would result in incapacity of more than 3 consecutive calendar days if left untreated.

When both spouses are both employed by the District, they are limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken:

- For the birth of the employees' son or daughter or to care for the child after birth;
- For placement of a son or daughter with the employees for adoption or foster care, or to care for the child after placement; or
- To care for an employee's parent with a serious health condition.

Military Family Leave Entitlements

Military Caregiver Leave

An eligible employee who meets the eligibility requirements for FMLA leave and is the spouse, son, daughter, parent, or next of kin (defined as the nearest blood relative) may take up to twenty-six (26) weeks of unpaid leave in a single twelve (12) month period to care for a "military covered service member":

A "covered service member," as it applies to this form of leave, is: (1) a current 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 covered veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness. For purposes of Military Caregiver Leave, a "covered veteran" means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the 5-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

- With respect to current members of the Armed Forces, National Guard or Reserves, a "serious injury or illness" is defined as an injury or illness that was incurred by the covered service member in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.
- With respect to covered veterans, a "serious injury or illness" is defined as a "qualifying injury or illness" that was incurred in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:
 - a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the servicemember's office, grade, rank or rating;
 - a physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASDR) of 50 percent or greater and such VASDR rating is based, in whole or in part, on the condition precipitating the need for caregiver leave;
 - a physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or
 - an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veteran Affairs Program of Comprehensive Assistance for Family Caregivers.

Military Caregiver Leave may be combined with other forms of FMLA-related leave providing a combined total of twenty-six (26) weeks of possible leave for any single twelve (12) month period; however, the other form of FMLA leave when combined cannot exceed twelve (12) of the twenty-six (26) weeks of combined leave.

The 12-month period for Military Caregiver Leave is defined as the 12-month period measured *forward* from the date an employee's first FMLA leave to care for the covered service member begins. In other words, the single 12-month period begins on the first day the eligible employee takes FMLA leave to care for a covered service member and ends 12 months after that date, regardless of the method used by the District to determine the employee's 12 workweeks of leave entitlement for other FMLA-qualifying reasons.

In cases where both spouses are employed by the District, the combined total of leave taken to care for a covered service member may not exceed 26 weeks in a single 12-month period.

"Qualifying Exigency" Leave

Employees meeting the eligibility requirements above may be entitled to use up to twelve (12) weeks of their Basic FMLA leave entitlement to address certain qualifying exigencies.

Leave may be used if the employee's spouse, son, daughter, or parent (the "military member") is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. With respect to a member of a *regular* component of the Armed Forces, "covered active duty" is defined as duty during deployment of the member with the Armed Forces to a foreign country. With respect to a member of a *reserve* component of the Armed Forces (i.e., the National Guard or Reserves), "covered active duty" is defined as duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to the various provisions as defined in Title 10 of the United States Code. Qualifying exigencies may include:

- a) Short-notice deployment (up to 7 days of leave);
- b) Attending military events and related activities;
- c) Arranging for alternative childcare and attending certain school meetings;
- d) Providing childcare on an urgent, immediate need basis;
- e) Addressing certain financial and legal arrangements;
- f) Attending certain counseling sessions;
- g) Spending time with a covered service member who is on short-term rest and recuperation leave (up to fifteen (15) calendar days);
- h) Caring for a military member's parent who is incapable of self-care, when such care is necessitated by the member's covered active duty (i.e., arranging for alternative care, providing care on an immediate need basis, admitting or transferring the parent to a care facility, attending meetings with staff at a care facility, etc.);
- i) Attending post-deployment activities that occur up to 90 days after the termination of the covered service member's active duty status or to address issues that arise from the death of a covered service member while on covered active duty status; and
- j) Any additional activities arising out of the service member's active duty or call to covered active duty status which are agreed upon by the District and the employee.

Employee's Responsibilities When Requesting FMLA Leave

If the need for leave is foreseeable, the employee must notify his/her supervisor(s) and Human Resources at least 30 days before the FMLA leave begins. When 30 days notice is not possible, the employee must give notice as soon as practicable (or within 1 or 2 business days) of learning of the need for leave, except in extraordinary circumstances. Failure to provide such notice may be grounds for delaying the start of the FMLA leave or denying the request for leave.

If the need to use FMLA leave is not foreseeable, the employee must notify his/her supervisor(s) and Human Resources as soon as practicable (or within 1 or 2 business days). Employees are expected to provide notice in accordance with this Policy, as well as the District's usual and customary notice requirements, which means that notice of the need for unforeseeable FMLA leave should ordinarily be given prior to the start of the employee's workday, absent unusual circumstances. Failure to provide such notice may be grounds for delaying the start of the FMLA leave or denying the request for leave.

When submitting a request for leave, the employee must provide sufficient information for the District to determine if the leave might qualify for FMLA leave, and also provide information on the anticipated date when the leave would start, as well as the anticipated duration of the leave.

Intermittent Leave

Leave because of a serious health condition involving an employee or an employee's spouse, child, or parent, or either type of Military Family Leave may be granted on an intermittent basis (in separate blocks of time due to a single health condition) or on a reduced-schedule leave (reducing the number of hours worked per workweek or workday) when necessary because of the nature of the medical condition and the scheduling of medical treatments. However,

leave may not be taken on an intermittent basis or on a reduced work schedule when used to care for the employee's own child during the first year following birth, or to care for a child placed with the employee for foster care or adoption, unless the District expressly agrees to such leave in writing.

When planning medical treatment, employees must consult with the District and make reasonable efforts to schedule leave so as not to unduly disrupt the District's operations.

If leave is unpaid, the District will reduce the employee's salary based on the amount of time actually taken. In addition, while an employee is taking recurring leave on an intermittent or reduced-schedule basis for foreseeable, planned medical treatments, the District may temporarily transfer or assign the employee to another position or an alternative position that better accommodates the recurring leave and which has equivalent pay and benefits.

Substitution of Accrued Paid Leave

FMLA leave is unpaid. However, certain types of paid leave must be substituted for unpaid leave. For example, accrued sick leave must be used for the staff members own serious health condition. When available, the use of personal and vacation time is optional. All paid leave will run concurrently with FMLA leave entitlement and substitution of paid leave time for unpaid leave time does not extend the 12-week leave period. Furthermore, in no case can the substitution of paid leave time for unpaid leave result in the receipt of more than 100 percent of an employee's normal wages. An employee electing to use any type of paid leave must follow the same terms and conditions of the employer's policy that apply to other employees for the use of such leave.

Employees who are on a leave of absence that is covered by payments such as disability benefits or Workers' Compensation benefits will not be required to substitute accrued paid leave while receiving these benefit payments. However, the District and the employee may agree to have accrued paid leave supplement the disability or Workers' Compensation benefits to the extent permitted by state law. Any leave of absence taken pursuant to an applicable disability law or Workers' Compensation law will be run concurrently with FMLA leave.

Maintenance of Health Benefits

An employee on FMLA leave is also entitled to have health benefits maintained while on leave. If an employee was paying all or part of the premium payments prior to leave, the employee must continue to pay his/her share during the leave period. Specifically, if paid leave is substituted for unpaid FMLA leave, the District will deduct the employee's portion of the group medical premium as a regular payroll deduction. If leave is unpaid, the employee will be responsible for continuing to contribute his/her portion of the premium by mailing it on a monthly basis to the District. The premium payment is due on the first day of each month.

The employee's coverage and the coverage of all enrolled dependents will be terminated if the payment of the employee's portion of the premium is more than 30 days late. If the payment is more than 15 days late, the District will send the employee a letter to this effect. If the District does not receive the payment for outstanding benefit premiums within 15 days after the date of that letter, the employee's coverage will terminate for non-payment of his/her required contributions.

If an employee on unpaid FMLA leave chooses not to return to work for reasons other than (1) a continued serious health condition of the employee or the employee's family member, (2) a serious injury or illness of a covered service member which would otherwise entitle the employee to FMLA leave, or (3) a circumstance beyond the employee's control, the District will require the employee to reimburse them the amount it paid for the employee's health insurance premium during the leave period.

Reporting While on Leave

While on leave, employees may be required to contact Human Resources to report on their status and intent to return to work. In addition, the employee must give notice as soon as practicable, within 2 business days, if the dates of the leave change, are extended, or were unknown initially.

Return to Work at the Conclusion of FMLA Leave

Prior to the exhaustion of FMLA leave, employees will be responsible for notifying Human Resources, in writing, regarding their intention to return to work.

An employee (whose leave was occasioned by the employee's own serious health condition that made the employee unable to perform their job) will be required to present medical certification from the health care provider that he/she is able to resume work. This certification must specifically address the employee's ability to perform the essential functions of his or her job. Failure to provide such medical certification may result in delay or denial of reinstatement.

Whenever possible, employees who return at the end of the approved leave time will be restored to the position they held when the leave began. If the same position is not available, the employee will be restored to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment. An exception to this policy of restoration may be made with respect to "key employees" (i.e., salaried employees in the top 10% of the District's payroll).

Special Provisions for School District Employees

An instructional employee is an employee whose principal function is to teach and instruct students in a class, a small group, or an individual setting (e.g., teachers, coaches, driving instructors, special education assistants, etc.). Teaching assistants and aides who do not have instruction as the principal function of their job are not considered an "instructional employee."

Intermittent Leave Taken By Instructional Employees

FMLA leave that is taken at the end of the school year and resumes at the beginning of the next school year is not regarded as intermittent leave but rather continuous leave. The period in the interim (i.e., summer vacation) is not counted against an employee and the employee must continue to receive any benefits that are customarily given over the summer break.

Intermittent leave may be taken but must meet certain criteria. If an eligible instructional employee needs intermittent leave or leave on a reduced-schedule to care for a family member with a serious health condition, to care for a covered service member, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on that leave for more than twenty percent (20%) of the number of working days during over the period for which the leave would extend, the District may require the employee to choose either to:

- a) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- b) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

Appropriate notice for foreseeable FMLA leave still applies and all employees must be returned to an equivalent position within the school district. Additional work-related certifications, requirements and/or training may not be required of the employee as a condition of their return to work.

Leave Taken by Instructional Employees Near the End of the Instructional Year

There are also special requirements for instructional employees taking leave and the leave's relation to the end of the term.

- a) If an instructional employee begins leave more than five (5) weeks prior to the end of the term, the District may require that the employee take the leave until the end of the term if the leave lasts more than three (3) weeks and the employee was scheduled to return prior to three (3) weeks before the end of the term.
- b) If the instructional employee begins leave less than five (5) weeks period before the end of the term—because of the birth of a son or daughter, the placement of a son or daughter for adoption or foster care, to care for a spouse, son, daughter or parent with a serious health condition, or to care for a covered service member, the District may require that the employee to continue taking leave until the end of the term if the leave will last more than two (2) weeks and the employee would return to work during that two (2) week period at the end of the instructional term.
- c) If the instructional employee begins taking leave during the three (3) weeks period before the end of the term because of the birth of a son or daughter, the placement of a son or daughter for adoption or foster care, to care for a spouse, son, daughter or parent with a serious health condition, or to care for a covered service member, the District may require that the employee continue leave until the end of the term if the leave is scheduled to last more than five (5) working days.

Any additional time that is required by the employer due to the timing of the end of the school year, will not be charged against the employee as FMLA leave because it was the employer who requested that the leave extend until the end of the term.

Fraud

An employee who fraudulently obtains FMLA leave is subject to disciplinary action, up to and including termination.

FMLA Notice

A notice which explains the FMLA's provisions and provides information concerning the procedures for filing complaints of violations of the FMLA shall be posted in each school building.

Family and Medical Leave Act of 1993 (as amended), Public Law 103-3

National Defense Authorization Act of 2008, Public Law 110-181

10 United State Code (USC) 101(a)(13)

29 USC 1630.1 and 2611-2654

[29 Code of Federal Regulations \(CFR\) Part 825](#)

Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191

42 USC 12102

45 Code of Federal Regulations (CFR) Parts 160 and 164

Note: Refer also to Policy #6552 – Uniformed Services Employment and Reemployment Rights Act (USERRA)/Military Leaves of Absence