

SECTION 300 – PERSONNEL

FAMILY MEDICAL LEAVE

POLICY 305

ARTICLE 1 FAMILY MEDICAL LEAVE ACT

- A. Pursuant to the federal Family and Medical Leave Act (FMLA), the District provides up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:
1. Incapacity due to pregnancy, prenatal medical care or child birth;
 2. To care for the employee's child after birth or following placement for adoption or foster care;
 3. To care for the employee's spouse, son, daughter, or parent, who has a serious health condition; and
 4. To care for a serious health condition that makes the employee unable to perform the employee's job.

ARTICLE 2 MILITARY FAMILY LEAVE ENTITLEMENT

- A. Eligible employees with a spouse, son, daughter, or parent on active duty or called to active duty status in the National Guard or Reserves in support of a contingency operation may also use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.
- B. Eligible employees may also take up to 26 weeks of leave to care for a covered service member during a single 12-month period. A covered service member is a current member of the Armed Forces, National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty. The injury or illness must make the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list. The term covered service member also includes a veteran undergoing medical treatment, recuperation, or therapy for a serious injury or illness, if the veteran was a member of the Armed Forces at any time during the 5 years preceding the date on which he/she undergoes treatment.

ARTICLE 3 BENEFITS AND PROTECTIONS

- A. During FMLA leave, the District maintains the employee's health coverage under any group health plan on the same terms as if the employee had continued to work. Employees must continue to pay their portion of any insurance premium while on leave. If the employee is able to, but does not, return to work after the expiration of the leave, the employee may be required to reimburse the District for payment of insurance premiums during leave.
- B. Upon return from FMLA leave, most employees are restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. Certain highly compensated employees "(key" employees) may have limited reinstatement rights.
- C. Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave. As with other types of unpaid leaves, paid leave time (*i.e.*, annual leave) will not accrue during the unpaid leave. Additionally, funeral leave, or jury duty pay are not granted while on unpaid leave.

References:

29 U.S.C. 2601 *et seq.* (Family and Medical Leave Act)

29 C.F.R. Part 825 (FMLA regulations)

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- D. Notwithstanding any other provision of this policy, an employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the period of FMLA leave.

ARTICLE 4 ELIGIBILITY REQUIREMENTS

- A. Employees are eligible for FMLA leave if they have worked for this District for at least 12 months, for 1,250 hours over the previous 12 months, and if they work at a worksite with at least 50 employees within 75 miles.

ARTICLE 5 DEFINITIONS OF SERIOUS HEALTH CONDITION

- A. A “serious health condition” is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee’s job, or prevents a qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive full calendar days combined with at least 2 visits to a health care provider or 1 visit and a regimen of continuing treatment; an incapacity due to pregnancy or prenatal care; or incapacity due to a chronic, permanent, or long term condition. Other conditions may meet the definition of continuing treatment.

ARTICLE 6 USE OF LEAVE

- A. With one exception, the maximum time allowed for FMLA Leave is 12 weeks in the designated 12-month period. The exception is leave to care for a covered service member. If leave involves care for a covered service member, the maximum combined leave entitlement is 26 weeks in the designated 12-month period, with leaves for all other reasons constituting no more than 12 of those 26 weeks.
- B. With one exception, the District measures the 12-month period in which leave is taken by the “rolling” 12- month method, measured backward from the date of any FMLA leave. The exception is for leave to care for a covered service member. In that case, the District calculates the 12-month period beginning on the first day the eligible employee takes FMLA leave to care for a covered service member and ending 12 months after that date.
- C. Spouses who are both employed by the District shall be entitled to a total of twelve (12) weeks of leave (rather than 12 weeks each) for the birth or adoption of a child or to care for a parent who has a serious health condition. FMLA leave for the birth or placement of a child for adoption or foster care must be concluded within 12 months of the birth or placement of the child.

ARTICLE 7 INTERMITTENT/REDUCED LEAVE

- A. An employee does not need to use his/her leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary to care for the serious health condition of the employee, immediate family member, or covered service member, or when necessary for a military qualifying exigency. However, leave taken intermittently or on a reduced schedule is not permitted for the birth of a child, to care for a newly-born child or for placement of a child for adoption or foster care.

References:

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- B. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the District's operations. Employees taking intermittent or reduced schedule leave that is foreseeable may be required to temporarily transfer to another job with equivalent pay and benefits that better accommodates that type of leave.

ARTICLE 8 ADDITIONAL RULES CONCERNING FMLA FOR TEACHERS

- A. Teachers who would otherwise return from FMLA leave near the end of a semester may be required to continue their leave through the end of the semester under the circumstances set forth below. In such cases, time on leave after the teacher would otherwise return shall not be counted as FMLA leave.
 - 1. Teachers who begin FMLA leave of at least three weeks' duration more than five weeks prior to the end of a semester: If the teacher will return during the three-week period before the end of the semester, he/she may be required to continue leave through the end of the semester.
 - 2. Teachers who begin FMLA leave of more than two weeks' duration less than five weeks prior to the end of a semester for any reason other than their own serious health condition or a "qualifying military exigency:" If the teacher would return during the two week period before the end of the semester, he/she may be required to continue leave through the end of the semester.
 - 3. Teachers who begin FMLA leave of more than five days' duration less than three weeks prior to the end of a semester for any reason other than their own serious health condition or a "qualifying military exigency:" Such teachers may be required to continue their leave through the end of the semester.

ARTICLE 9 USE OF ACCRUED PAID LEAVE

- A. To the extent permitted by law, the District requires that employees use any accrued paid leave (such as personal leave) concurrently with their FMLA leave.

ARTICLE 10 EMPLOYEE RESPONSIBILITIES

- A. Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the District's normal call-in procedures.
- B. Employees must provide sufficient information for the District to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the District if the requested leave is for a reason for which FMLA leave was previously taken or certified.
- C. Employees also may be required to provide a medical certification and periodic recertification supporting the need for leave. If so, employees will be required to complete applicable U.S. Department of Labor medical certification forms. The District may require a second or third medical opinion at the District's expense. Documentation confirming family relationship, adoption or foster care may be required. If notification and appropriate certification are not provided in a timely manner, approval for leave may be denied. Continued absence after denial of leave may result in disciplinary action, up to and including termination, in accordance with the District's attendance guidelines.

References:

29 U.S.C. 2601 *et seq.* (Family and Medical Leave Act)

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- D. An employee must provide medical certification of fitness for duty before returning to work from leave taken to care for the employee's own serious health condition. The District requires that the fitness for duty certification address the employee's ability to perform the essential functions of his/her position.

ARTICLE 11 DISTRICT RESPONSIBILITIES

- A. The District will inform employees requesting leave whether they are eligible under FMLA. If they are, the notice will specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the District will provide a reason for the ineligibility.
- B. Additionally, the District will inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the District determines that the leave is not FMLA-protected, the District will notify the employee.
- C. In providing this information, the District will use appropriate U.S. Department of Labor notice and eligibility forms.

ARTICLE 12 FAILURE TO RETURN AFTER FMLA LEAVE

- A. Any employee who fails to return to work as scheduled after FMLA leave or exceeds the 12-week FMLA entitlement (or in the case of military caregiver leave, the 26-week entitlement), will be subject to the District's leave of absence and attendance policies. This may result in termination if the employee has no other available leave that applies to his/her continued absence. Likewise, following the conclusion of an employee's FMLA leave, the District's obligation to maintain group health plan benefits ends (subject to any applicable COBRA rights).

ARTICLE 13 OTHER EMPLOYMENT

- A. The District prohibits employees from holding other employment during a designated FMLA leave of absence unless approval in advance of the employment is granted by the District. Violation of this policy may result in disciplinary action, up to and including immediate termination of employment.

ARTICLE 14 FRAUD

- A. Providing false or misleading information or omitting material information in connection with an FMLA leave may result in disciplinary action, up to and including immediate termination.

ARTICLE 15 UNLAWFUL ACTS

- A. FMLA makes it unlawful for the District to:
1. Interfere with, restrain, or deny the exercise of any right provided under FMLA;
 2. Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

References:

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ARTICLE 16 ENFORCEMENT

- A. While the District encourages employees to bring any concerns or complaints about compliance with the FMLA to the attention of the District's Human Resource Manager, an employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against the District. Further, the FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

ARTICLE 17 LIMITED NATURE OF THIS POLICY

- A. This Policy should not be construed to confer any express or implied contractual relationship or rights to any employee not expressly provided for by the FMLA. In the event that any terms or procedures set forth in this policy conflict or are otherwise inconsistent with mandatory provisions of the FMLA, the mandatory provisions of the FMLA shall be controlling. The District reserves the right to modify this or any other policy as necessary, in its sole discretion to the extent permitted by law.

ARTICLE 18 POSTING/NOTICES TO EMPLOYEES

- A. The District will post the U.S. Department of Labor poster explaining the FMLA's provisions in a location at each District building where it can be readily seen by employees and applicants for employment. Additionally, a copy of this policy will be incorporated into any employee handbooks provided to employees.

References:

29 U.S.C. 2601 *et seq.* (Family and Medical Leave Act)

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