

FAMILY LEAVE ACT PROCEDURES

The following is a guide that will assist employees as well as department supervisors to be consistent with procedures to follow when an employee is requesting FMLA.

Provisions governing eligibility for FMLA leave may be found in negotiated agreements and/or in employee handbooks.

Eligibility:

Any District employee who (1) has been employed for at least 12 months and (2) has worked at least 1,250 hours in the 12 month period immediately preceding the request.

Type of Leaves Available:

The following events may qualify an eligible employee for leave under the District's FMLA policy:

- A. For birth of a son or daughter and to care for the newborn child;
- B. For placement with the employee of a son or daughter for adoption or foster care;
- C. For the care of the employee's spouse, son, daughter or parent with serious health condition;
- D. For the employee's own serious health condition that makes the employee unable to perform the functions of the job;
- E. For 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 support of a contingency operation as either a member of the National Guard or Military Reserves or a retired member of the regular armed forces or reserves;
- F. For the care of a covered service member who is a current member (or a member on the temporary disability retired list) of the Regular Armed Forces, National Guard, or Reserves who has incurred an injury or illness in the line of duty while on active duty, provided that such injury or illness renders the service member medically unfit to perform the duties of his/her office, grade, rank, or rating. To qualify the employee must be the spouse, son, daughter, parent or next of kin (nearest blood relative) of the service member.

How Leave May be Taken:

Leaves under the FMLA may be taken as described below:

- A. Leave may be taken in solid blocks of time intermittently, or in the form of a reduced leave schedule.
- B. Leave to care for a newborn or newly placed child (a.k.a. bonding leave) will only be granted in solid blocks of time.

The District will charge an employee's FMLA usage by the shortest period of time that it uses to account for absences for payroll purposes. If the employee requires continuing intermittent leave for foreseeable planned medical treatments and the taking of that leave would substantially impair the operations of the District, the employee may be transferred, temporarily, during the period of intermittent leave, to an available alternate position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. The alternate position must have equivalent pay and benefits. The transfer to an alternate position may require compliance with any applicable collective bargaining agreement, federal law (such as the Americans with Disabilities Act) and state law.

Employee Rights:

Employees have the right to continuation of health care coverage while on leave, restoration to the same or equivalent position upon expiration of leave, freedom from discrimination or retaliation for exercising FMLA rights.

Amount of Leave Available:

- A. Up to 12 weeks of unpaid leave per twelve month period for leave types described in Types of Leave A, B, C, D and/or E above; or
- B. Up to 26 weeks of unpaid leave during a single twelve month period for the leave type described in Types of Leave F above.

The District utilizes a 12-month period measured forward from the date the employee's first FMLA leave begins. If a husband and wife or partners are employed with the District and using the leave for birth, adoption, and foster care or to care for the employee's parent with a serious health condition the amount of leave is limited to a combined total of 12 weeks of leave.

Employee Pay Status and Use of Accrued Leave:

FMLA leave is unpaid. Provisions governing whether use of an employee's paid leave runs concurrent with use of FMLA leave or consecutive with use of FMLA leave may be found in negotiated agreements and/or in employee handbooks.

Roles and Responsibilities:

District employees play important roles to ensure compliance with the administration of leaves under the FMLA and in accordance with federal law and District FMLA policy 5328. District employees must perform the responsibilities as outlined below and in accordance with the procedures developed for this policy.

Role	Responsibility
Employees	<ol style="list-style-type: none"> 1. Comply with District Leaves of Absence policies. 2. Notify immediate supervisor (or designee) of their need for a leave of absence. 3. Participate and cooperate fully in the initial certification process, requests for any clarifications, any recertification, a second or third opinion, or a fitness for duty certificate, including: <ol style="list-style-type: none"> a. Providing complete, sufficient and authentic certification to support the employee's FMLA request. b. Furnishing the health care provider with any necessary authorization from the employee or the employee's family member so the health care provider can release a complete and sufficient certification to the District. 4. Follow District policy and practice with regard to absence notification, use of accrued sick leave, vacation leave and compensatory time. 5. Make a reasonable effort to schedule any planned treatment so as not to unduly disrupt operations.
Superintendent	<ol style="list-style-type: none"> 1. Ensure that Principals and supervisors comply with FMLA policy and procedures. 2. Approve qualifying leaves of absence under the FMLA for employees under his/her supervision.
Principals and Supervisors	<ol style="list-style-type: none"> 1. Respond to employee requests for leaves of absence including leaves governed by the FMLA. 2. Recognize the need for potentially FMLA qualifying leave based on actions or statements of employees. 3. Within five business days of a request for FMLA: <ol style="list-style-type: none"> a. Prepare and complete the Notification and Eligibility and Roles and Responsibilities Form. b. Prepare and Complete the Leave of Absence Form. c. Provide Certification of Health Care Provider Form to employee requesting leave. d. Prepare and Complete the FMLA Designation Notice. 4. Provide required FMLA related paperwork to Superintendent for approval. 5. Determine if requests for Leaves of absence are FMLA qualifying and if not deny the request, withdraw designation and explore other leave options available (if any). 6. Provide FMLA related paperwork to payroll clerk so FMLA can be entered into the payroll system. 7. Monitor FMLA usage. 8. Inform payroll clerk when FMLA should be ended in payroll. 9. Prepare letter of notification to employee that FMLA is ending.

Notice of FMLA:

There are three ways that the District may receive notice that an employee's absences should be designated as FMLA.

A. Employee Requests Leave – The employee requests the leave for reasons described above.

1. Foreseeable Leave Request - With regard to an employee requesting the leave, the Act mandates that if the necessity for the leave is foreseeable, the employee is required to give at least 30 days advance notice to the District. Examples of foreseeable leave include planned surgeries and planned medical appointments. Failure to provide such notice without reasonable excuse allows the District to delay the taking of the FMLA leave until at least 30 days after the date the employee provides notice of his or her need for leave.

2. Unforeseeable Leave Request - If the necessity for the leave is unforeseeable, the employee should give notice to the District "as soon as practicable under the facts and circumstances of the particular case." Examples of unforeseeable leave

include premature birth, a child suddenly becoming available for adoption, short-notice military deployment or a medical emergency requiring immediate treatment.

3. Employee Responsibilities - Employees, absent unusual circumstances, must comply with District policy, labor agreements and state law concerning the use of sick leave, vacation days, compensation time and other types of leave and comply with the notice requirements within the time prescribed by the policy, agreement or rule applicable to such leave. In addition, the employee must make reasonable efforts to schedule doctor appointments, treatment or therapy so as not to unduly disrupt the operations of the District.

- a) Actions or Statements of Employee Suggests Entitlement to Leave – The employee’s actions or statements are such that the supervisor should inquire whether the leave is potentially FMLA qualifying for the reasons described above and if so, designate accordingly.

1. Serious Health Condition for Self or Family Member’s Condition - With regard to an employee’s actions or statements that mandate the supervisor to inquire further, the Act states the employee does not have to expressly assert rights under FMLA or even mention the Act. All that is needed is enough information to determine that the employee has a serious health condition as described above. Examples of employee actions or statements where the supervisor must inquire further include but are not limited to:

- a) Hearing an employee state that their upcoming surgery will require hospitalization;
- b) Learning from an employee that their son or daughter has been wounded while serving in the military and that they need to take time off to visit and care for them;
- c) Mentioning that they will need to take time off to care for a spouse, son, daughter or parent with a serious health condition as defined above; or
- d) Hearing from an employee’s spokesperson (child, parent, spouse, doctor) that the employee was seriously injured or seriously ill.

2. Qualifying Exigency for Military Family Leave – The statements or actions of employees who are eligible for FMLA also require the supervisor to make further inquiries.

Examples of employee actions or statements where the supervisor must inquire further include but are not limited to:

- a) Notification that the employee needs to participate in military related activities;
- b) Statements or actions related to those items that constitute a Qualifying Exigency.
- c) Work Related Injury - The employee sustains a work related injury that results in a serious health condition.

Notice of Eligibility and Rights & Responsibilities

(Pre-Certification Receipt):

Before a qualifying leave is designated as FMLA, the District must determine if the employee is eligible to take FMLA leave. Once this determination is made the District must notify the employee of their rights and responsibilities under the FMLA. This is done by giving the employee a Notice of Eligibility and Rights & Responsibilities. The District must notify employees in writing of eligibility or non-eligibility within five (5) business days (absent extenuating circumstances) and thereafter during the same FMLA leave year, only if the employee’s eligibility status changes.

The eligibility notice must state:

1. Whether or not the employee is eligible; and
2. If not eligible, at least one reason why the employee is not eligible (i.e. does not have one (1) year of service and or does not meet 1250 hours requirement)

If the employee has exhausted their 12-week FMLA entitlement in the preceding 12 months, the request should be denied.

Certification:

The Department of Labor, effective January 16, 2009, issued four (4) separate Certification of Health Care Provider forms, which have been adapted for District use. Listed below are short descriptions of each form and when the form should be used. Certification forms must be returned within 15 days.

- A. Employee’s Own Serious Health Condition – Use Form WH-380E when the employee is requesting FMLA leave to care for their own serious health condition. This form should be given to the employee for completion by the employee and the employee’s health care provider.
- B. Family Member’s Serious Health Condition – Use Form WH-3807 when the employee is requesting FMLA leave to care for employee’s spouse, son, daughter or a parent with a serious health condition. This form should be given to the employee for completion by the employee and the employee’s health care provider.

- C. Military Family Leave (a.k.a. "Qualifying Exigency Leave") – Use Form WH-384 when the employee needs to take leave for a qualifying exigency arising from 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 support of a contingency operation as either a member of the National Guard Military Reserves or a retired member of the regular armed forces or reserves. This form should be given to the employee for completion who in turn will gather the necessary military orders or other documentation needed to approve the leave.
- D. Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave – Use Form WH-385 when the employee needs to care for a covered service member with a serious injury or illness, and the employee is the spouse, registered domestic partner, son, daughter, parent or next of kin of the service member. This form should be given to the employee for completion in turn will give it to a United States Department of Defense health care provider or other authorized health care provider for completion.

In all instances in which certification is requested, it is the employee's responsibility to provide the District with a complete and sufficient certification. If the health care provider's information is incomplete, the District may require the employee to cure the deficiencies by providing written notice to the employee of what specific information is still needed and give the employee seven days to cure the deficiencies. If the employee fails to cure the deficiencies, the District can deny the leave or the District can also designate an individual (HR representative, health care provider – someone other than the employee's direct supervisor) to contact the employee's health care provider to seek clarification regarding handwriting or the meaning of a response.

Designating the Leave (Post-Certification Receipt):

Designation of FMLA leave must normally be made within five business days of the time the employee gives notice of the need for leave. Because the District requires medical certification for all serious health condition leaves, ultimate designation in this instance will occur after receiving the properly completed certification form.

The supervisor must provide the employee with the Notice of Eligibility and Rights & Responsibility Form. The supervisor is also responsible for attaching the appropriate Certification of Health Care Provider Form with the Notice of Eligibility. The employee has 15 days to return the completed certification form, at which time the supervisor completes the

Designation Notice. The Designation Notice is completed after the certification forms are submitted, or 15 days have elapsed. Even if the medical certification ultimately fails to confirm that the leave is FMLA qualifying, the supervisor must provide the employee with a Designation Notice. If the information provided by the employee is incomplete or insufficient, the supervisor will provide the employee with seven days to cure the deficiencies. The information that is incomplete or insufficient must be noted on the Designation Notice. (**Note:** Supervisors have the responsibility of designating the leave.)

The FMLA Designation Notice, the completed the Certification of Health Care Provider Form and any other correspondence regarding the issue must be placed in the employee's confidential department medical file. The Leave of Absence form also needs to be completed and signed off on by the Principal (or designee). Copies of the Leave of Absence form should be given to the employee and the payroll clerk. A copy should also be placed in the employee's personnel file.

Recertification:

Under appropriate circumstances, the District may request recertification. The following are examples of when the District may request a recertification:

A. Solid Blocks of Time - For those employees who use FMLA leave in solid blocks of time, the District may request recertification if the employee requests an extension of the originally approved leave, circumstances described in previous certification change significantly (e.g., the duration of the illness, the nature of the illness) or the District receives information that casts doubt upon the stated reason for the absence or the continuing validity of the certification. Note, however, that leave for a different medical matter is not covered by the original certification and will require its own certification.

B. Intermittent Leave - For those employees who use FMLA leave intermittently, the District may request recertification if the employee requests an extension of the originally approved leave, circumstances described in previous certification have changed significantly (e.g., the duration of the illness, the nature of the illness) or the District receives information that casts doubt upon the stated reason for the absence or the continuing validity of the certification. The District may not request recertification in less than the minimum duration of the leave, as noted by the health care provider.

C. Medical Recertification – Frequency

1. Less than 30 Day – If the duration of the leave is less than 30 days, (i.e. period that the employee is unable to work continuously or intermittently) a request for recertification is not permitted unless:
 1. An extension to the original leave is requested by the employee;
 2. If there are significant changes since the original certification was received (i.e. complications, duration/frequency of absences, nature severity or illness); or
 3. If the District receives information that casts doubts upon the stated reason for the absence or the continuing validity of the existing certification.
2. More than 30 Days – If the duration of the leave is more than 30 days (i.e. period that the employee is unable to work continuously or intermittently) a recertification can be requested:
 - a. Upon expiration of a period of incapacity specified on the certification;
 - b. Every six months in connection with an absence; and
 - c. For the reasons listed below:
 - i. An extension to the original leave is needed;
 - ii. If there are significant changes since the original certification was received (i.e. complications, duration/frequency of absences, nature severity of illness) “Significant change” includes pattern of absences before/after scheduled days off or longer duration of days of absences than specified on certification for most recent two or more episodes of incapacity.
 - iii. If the District receives information that casts doubt about the employee’s stated reason for the absence or the continuing validity of the certification.

“Doubt” could include reliable information that the employee’s off-duty activities are inconsistent with the need for FMLA.

The District may also provide an employee’s health care provider with a record of employee’s absence pattern and ask if the condition and need for leave are consistent with such a pattern. In all instances in which recertification is requested, it is the employee’s responsibility to provide the District with a complete and sufficient recertification. If the health care provider’s information is incomplete and insufficient, the District may require the employee to cure the deficiencies by providing written notice to the employee of what specific information is still needed and give the employee seven days to cure the deficiencies. If the employee fails to cure the deficiencies, the District can withdraw the previously approved and designated leave.

In cases of recertification, requests for second and third on a medical recertification are not permitted. Recertifications are done at the District’s expense unless otherwise stated in the policy.

Returning to Work after FMLA:

As a condition of restoring an employee whose FMLA leave was occasioned by the employee’s own serious health condition, the District may require the employee to submit a medical certification (i.e., a fitness for duty certification that the employee is able (or unable) to return to work provided that the District requires all similarly-situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain a fitness for duty certification.) The District may seek a fitness-for-duty certification only with regard to the particular health condition that caused the employee’s need for FMLA leave. The certification from the employee’s health care provider must certify that the employee is able to resume work.

Additionally, the District may require that the certification specifically address the employee’s ability to perform the essential functions of the employee’s job. In order to require such a certification, the District must provide an employee with a list of the essential functions of the employee’s job no later than with the designation notice and must indicate in the designation notice that the fitness-for-duty certification must address the employee’s ability to perform those essential functions. If the District satisfies these requirements, the employee’s health care provider must certify that the employee can perform the identified essential functions of his or her job. The cost of the fitness-for-duty certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification. No second or third opinions on a fitness-for-duty certification may be required.

Special Rules for Instructional Employees:

Certain special rules apply to employees of public school boards, elementary, and secondary schools. As a public entity, all educational institutions are covered by the FMLA. This does not mean, however, that all employees are eligible. Employees at schools with less than 50 employees in a 75-mile radius are not eligible for the protections afforded by FMLA. Practically, this means that a school with less than 50 employees must post the required notices and comply with other notice provisions, but their employees are not entitled to leave under the FMLA.

These special rules apply only to “instructional employees.” “Instructional employees” are those whose principal function is to instruct students in a class or an individual setting. Covered employees include teachers, athletic coaches, driving

instructors, and special education assistants. The special rules do not apply to teacher assistants or aides, counselors, cafeteria workers, bus drivers, etc., because their primary function is not to instruct students.

- A. Leave During Summer or other School Breaks – Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to work is not counted against the employee's FMLA leave entitlement. An instructional employee who is on FMLA leave at the end of the school year must be provided benefits over the summer vacation that employee would normally receive if they had been working at the end of the school year.
- B. Intermittent Leave of more than 20% of Working Days – If an instructional employee needs intermittent leave or leave on a reduced leave schedule, which is foreseeable based on planned medical treatment and the employee would be on leave for more than 20 percent of the total number of working days (i.e. 2 days out of a 5 day work week) over the period of leave, the employer may require the employee to choose either to:
 - 1) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment (i.e., if a treatment is required three times a week for four weeks, the employee could be required to take four weeks of leave); or
 - 2) Transfer temporarily to an available alternative position for which the employee is qualified for and which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

Employees taking leave 20 percent or less of the working days during the leave period would not be subject to transfer to an alternative position.

- C. Failure to give Required Notice of Foreseeable Need for Leave – If an instructional employee does not give required notice of foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the employer may require the employee to take leave of a particular duration, transfer temporarily to an alternative position, or delay the taking of leave until the notice provision is met.
- D. Leave at the End of a School Term – The regular rules regarding return from leave apply except when an instructional employee's leave is to expire near the end of a school term. The following rules apply where an instructional employee's leave expires near the end of the school term:
 - 1) The District may require the employee to continue taking leave until the end of the term where an instructional employee begins leave more than five weeks before the end of a term, the leave will last at least three weeks, and the employee would return to work during the three-week period before the end of the term.
 - 2) The District may require the employee to continue taking leave until the end of a term because of the birth of a son or daughter, the placement of 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 leave will last more than two weeks; and the employee would return to work during the two-week period before the end of the term because of his or her own serious health problem.
 - 3) The District may require the employee to continue taking leave until the end of the term where the employee begins leave during the three-week period before the end of a term because of the birth of 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 leave will last more than five working days. This rule does not apply where the employee is on leave during the three-week period before the end of a term because of his or her own serious health condition.

For purposes of this rule, the end of a school term means the end of a semester. The District can only impose this rule for two semesters per school year.

- E. Duration of FMLA Leave – In the case of an employee who is required to take leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. The employer has the option not to require the employee to stay on leave until the end of the school term despite the rules stated above. The employer is required to maintain the employee's group health insurance and restore the employee to the same or equivalent job including other benefits at the conclusion of the leave.
- F. Restoration to an Equivalent Position – The determination of how an employee is to be restored to an equivalent position upon return from leave will be made on the basis of established school board policies, practices, and collective bargaining agreements. An employee may not be restored to a position requiring additional licensure or certification.