

## **PERSONNEL SERVICES**

**Regulation 4321**  
**(Form 4321)**

### **Absences, Leave and Vacation**

#### **Family and Medical Leave**

The district will administer leave that qualifies for Family and Medical Leave Act (FMLA) protection in accordance with federal law. This policy is intended for guidance and shall not be interpreted to expand the district's responsibilities beyond the requirements of the law. For employees who are not eligible for FMLA leave, including employees who have exhausted available FMLA-protected leave, requests for leave shall proceed according to the district's established policies.

#### **Definitions**

#### **Eligibility**

To be eligible for FMLA leave benefits, the employee must:

1. Have been employed in the district for at least 12 months (but not necessarily consecutively).
2. Have been employed for at least 1,250 hours of service during the 12-month period immediately preceding the leave.
3. Be employed at a worksite where 50 or more employees are employed by the district within 75 miles of that worksite.

#### **Qualifying Reasons for Leave**

An absence may qualify for FMLA protection if it is for one of the following reasons:

1. Birth and first-year care of the employee's child.
2. Adoption or foster placement of a child with the employee.
3. Serious health condition of the employee that makes the employee unable to perform one or more of the essential functions of his or her job or the serious health condition of the employee's spouse, child or parent.
4. Care of a spouse, child, parent or next of kin who is a covered servicemember (including some veterans) with a serious illness or injury (military caregiver leave).
5. A qualifying exigency arising out of the fact that the spouse, child or parent of the employee is on covered active duty, or has been notified of an impending call or order to covered active duty, in the Armed Forces.

## **Definitions**

The following definitions apply to FMLA leave:

1. Serious Health Condition - An illness, injury, impairment, or physical or mental condition that involves the following:

a. Inpatient Care: Inpatient care (overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care.

b. Continuing Treatment: Continuing treatment by a health care provider, including the following:

i. Incapacity and Treatment: A period of incapacity of more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:

1. Treatment two or more times, within 30 days of the first day of incapacity, by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services under order of, or on referral by, a health care provider; or

2. Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of a health care provider. The in-person treatment visit must take place within seven days of the first day of incapacity.

ii. Pregnancy or Prenatal Care: Any period of incapacity due to pregnancy, or for prenatal care (even if the absence does not last more than three days and the employee or family member does not receive treatment from a health care provider during the absence);

iii. Chronic Conditions: Any period of incapacity or treatment for such incapacity due to a chronic serious health condition (even if the absence does not last more than three days and the employee or family member does not receive treatment from a health care provider during the absence). A chronic serious health condition is one which:

1. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

2. Continues over an extended period of time (including recurring episodes of a single underlying condition);

3. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

iv. **Permanent or Long-Term Conditions:** A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

v. **Multiple Treatments:** Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

c. **Exceptions:** Unless complications develop, a Serious Health Condition does not include cosmetic treatments, such as most treatments for acne or plastic surgery, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc. Treatment for substance abuse by a health care provider or on referral by a health care provider may be a serious health condition if the conditions of this policy are met. Absence due to use of the substance, rather than for treatment, does not qualify for FMLA leave.

2. Treatment - examinations to determine if a serious health condition exists and evaluations of the condition. "Treatment" does not include routine physical, eye, or dental examinations.

3. Qualifying Exigency – One of the following activities or conditions, occurring while the employee's spouse, son, daughter, or parent is on active duty or call to active duty status in the National Guard or Reserves:

- a. Short-notice deployment - notice is received seven days or less from date of deployment;
- b. Military events and related activities;
- c. Childcare and school activities - arranging for alternatives or changed circumstances;
- d. Financial and legal arrangements;
- e. Counseling;
- f. Rest and recuperation – during period of deployment;
- g. Post-deployment activities; and
- h. Additional activities agreed upon by the employer and employee.

4. Covered Service Members – Any current member of the Armed Forces, including the National Guard or Reserves.

5. Instructional employee - A person employed principally in an instructional capacity, whose principal function is to teach and instruct students in a class, a small group, or an individual setting, including athletic coaches and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aids who do not have as their principal function actual teaching or instructing, or auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily non-instructional employees.

## **Notice to Employees**

### ***General Notice***

The district will post notice to employees explaining FMLA benefits in accordance with law. If the district employs 50 or more employees, it will include FMLA notice in an employee handbook or other written guidance to employees concerning employee benefits or leave rights or will distribute a copy of the general notice to each new employee upon hiring. Notice may be provided electronically in accordance with law.

### ***Eligibility and Rights and Responsibilities Notices***

Absent extenuating circumstances, the district will provide the employee notice of the employee's eligibility to take FMLA leave and the rights and responsibilities of the employee within five business days of the request for leave or acquiring knowledge that an employee's leave may be for an FMLA-qualifying reason. Such notice will be provided at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period, and no subsequent notice is required in the 12-month period unless leave is taken for a different qualifying reason or the employee's eligibility status has changed.

### ***Designation Notice***

When the district has enough information to determine whether the leave is being taken for an FMLA-qualifying reason, the district will provide written notice to the employee within five business days, absent extenuating circumstances, regarding whether the leave will be counted as FMLA leave. The district will notify the employee if a fitness-for-duty certification is required before returning to work and, if required, include a list of the essential functions of the employee's position. The district will notify the employee of the number of hours, days or weeks that will be counted against the employee's FMLA leave entitlement, if known. The district may designate leave as FMLA leave retroactively if the retroactive designation will not cause harm or injury to the employee.

## **Employee Notice to the District**

An employee must notify the district of the need for leave and explain the reasons for the leave so the district can determine whether the leave qualifies for FMLA. The leave may be delayed or denied if the employee fails to give such notice.

In all cases of foreseeable leave, the employee must provide notice, in the same manner that is required under the district's leave policies, to the superintendent or designee of the reasons for the leave, the anticipated duration of the leave and the anticipated start of the leave. If an employee fails to provide the required notice, the district may delay or deny the FMLA-protected leave.

When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to the district as soon as practicable under the facts and circumstances of the particular case, in the same manner that notice is required under the district's leave policies. The employee or the employee's spokesperson, if necessary, shall provide sufficient information for the district to reasonably determine whether the FMLA may apply to the leave request.

If the leave is for a qualifying exigency, an employee must provide notice as soon as practicable, regardless of how far in advance the leave is foreseeable. For all other qualifying reasons, an employee must provide 30 days' notice of the need to take FMLA leave when the need for leave is foreseeable. When 30 days' notice is not practicable, the employee must provide notice as soon as practicable and must explain upon request why 30 days' notice was not practicable.

"As soon as practicable" means as soon as both possible and practical under all the facts and circumstances of the individual case.

### **Leave Use**

For all FMLA purposes except military caregiver leave, the district adopts a "rolling" 12-month period measured from the date of any FMLA leave usage.

1. All eligible employees are entitled to leave for a period not to exceed 12 workweeks per leave year for:

- The birth and first-year care of the employee's child.
- The adoption or foster placement of a child with the employee.
- A serious health condition of the employee that makes the employee unable to perform one or more of the essential functions of his or her job or the serious health condition of the employee's spouse, child or parent.
- A qualifying exigency arising out of the fact that the spouse, child or parent of the employee is on covered active duty, or has been notified of an impending call or order to covered active duty, in the Armed Forces. The amount of leave available for a particular type of qualifying exigency may be limited by law.

2. The FMLA leave year for military caregiver leave begins on the first day that such leave is taken and runs for the following 12 months. All eligible employees are entitled to military caregiver leave for a period not to exceed 26 workweeks of leave per single 12-month period for the care of a spouse, child, parent or next of kin who is a covered servicemember. Twenty-six

weeks of leave are available per covered servicemember, per injury/illness; however, no more than 26 weeks of leave may be used during each single 12-month period.

3. When eligible for military caregiver leave and another FMLA category, an eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during a single 12-month period, provided that the employee is entitled to no more than 12 workweeks of leave for one or more of the following: the birth of the employee's child or to care for such child; the placement of a child with the employee for adoption or foster care; in order to care for the employee's spouse, son, daughter or parent with a serious health condition; for the employee's own serious health condition; or because of a qualifying exigency. For example, an employee could take 16 weeks of military caregiver leave and still have ten weeks available for the birth of a child. However, an employee who used ten weeks of military caregiver leave could not take 14 weeks for the birth of a child because that exceeds the 12 weeks allowed for such leave. Leave that qualifies as both military caregiver leave and leave for the serious health condition of a parent, spouse or child will be designated first as military caregiver leave.

4. When both spouses are employed by the district and eligible for FMLA leave, the leave will be limited to an aggregate total of 12 workweeks during a 12-month period in cases where the leave is taken for the birth or first-year care of the employees' child, adoption or foster placement of a child with the employees, or to care for a parent with a serious health condition. However, where both spouses use a portion of the total 12-week FMLA leave entitlement for the same qualifying event, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for another qualifying purpose. When both spouses are employed by the district and use military caregiver leave or a combination of military caregiver leave and leave for the birth or first year care of their child, adoption or foster placement of a child with the employees, or to care for a parent with a serious health condition, both employees will be limited to an aggregate total of 26 workweeks of leave.

5. The district shall apply all appropriate paid leave to an FMLA absence to the extent allowed by law and policy, giving proper notice to the employee. If an employee's accrued paid leave is exhausted, but an FMLA-qualifying reason for absence persists or a new FMLA-qualifying reason for absence occurs, the resulting absences will continue to be protected FMLA leave until allowable FMLA leave has been used, but such absences will be unpaid.

6. When an employee has an absence that meets the criteria to be an FMLA-qualified absence, the district will designate such absence as part of the employee's total annual FMLA entitlement, even if the employee has not requested FMLA leave and/or is absent under paid or unpaid leave in accordance with law or district policy. If an employee is on a Workers' Compensation absence due to an injury or illness that would also qualify as a serious health condition under the FMLA, the same absence will also be designated as an FMLA-qualifying absence and charged against the employee's FMLA-protected time entitlement.

7. FMLA leave may be taken intermittently as required for the health of the employee or family member or as reduced-schedule leave in increments no greater than the shortest period of time that the district uses to account for use of other forms of leave, provided that it is not greater than

one hour and provided that the FMLA entitlement is not reduced by more than the amount of leave actually taken. Instructional employees may take intermittent or reduced-schedule leave to be with a healthy newborn only when the district and the employee have reached agreement for how the leave will be used.

8. The district reserves the right to require adequate certification and recertification of any FMLA-qualifying event or condition of the employee or employee's spouse, child, parent or next of kin and authentication or clarification of such certification as the district deems necessary. Failure to provide such certification when requested will result in denial of the leave, and may result in discipline or termination of employment. Employees on FMLA designated leave must periodically report on their status and intent to return to work. The district may also require that an employee present a certification of fitness to return to work.

9. During a leave related to the employee's serious health condition, the employee shall exhaust all available paid sick leave, personal leave or vacation before continuing such leave on an unpaid basis.

During a family or medical leave provided under this regulation for all other FMLA-qualifying leave, an employee shall first exhaust all unused vacation or personal days before continuing such leave on an unpaid basis.

### **Instructional Employees**

If intermittent leave or reduced-schedule leave equals more than 20 percent of instructional time, the district may require instructional employees who take such leave due to medical reasons to take block leave or to find an alternative placement for the period of planned medical treatment. When an instructional employee on FMLA leave is scheduled to return close to the end of a school term, the district may elect to use a special rule to prolong the employee's leave until the beginning of the next school term, thus extending the leave beyond the period where an FMLA-qualifying reason exists. In such an instance, the prolonged leave time is unpaid and is not charged against the employee's annual FMLA entitlement. In cases where the special rules for instructional employees apply, the superintendent may apply those special rules or the general FMLA rules as best serves the interest of the district.

### **Leave Protections**

During an employee's family or medical leave of absence, the District will continue to provide health, life, vision, and dental insurance coverage for employees who are eligible for insurance benefits. Voluntary deductions (employee contributions) for (dependent) insurance for health/life/vision/dental (and employee disability and/or supplemental life insurance) must be paid in full each month and received by the twenty-fifth (25th) day of the month. Payments are to be submitted to the insurance office. Failure to make payments in a timely manner while on FMLA leave may result in the loss of any and all insurance coverage provided by the District to its employees. Employees should contact the District administrator responsible for coordinating insurance benefits regarding specific arrangements for making the required payments. An

employee who fails to return to work after the expiration of his or her allowed leave time will be expected to reimburse the district for those benefits paid, as required by law.

Eligible employees who are absent for an FMLA-qualifying reason generally may return to the same position or an equivalent position with equivalent pay, benefits and working conditions at the conclusion of the leave, in accordance with law. However, the district has the discretion to assign employees taking intermittent leave or returning from FMLA leave to a different position or a position in a different building, grade level or classroom as long as the employee has the appropriate certification or license for the position, if the district determines that such placement is necessary to ensure consistency of instruction.

The FMLA makes it unlawful for any employer to interfere with, restrain or deny the exercise of any right provided under the FMLA. Additionally, it is unlawful for any employer to discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA.

### **Recordkeeping**

The superintendent or designee will ensure that personnel records regarding FMLA eligibility and leave are maintained in accordance with law and available for inspection, copying and transcription by representatives of the U.S. Department of Labor upon request.

### **Enforcement**

The U.S. Department of Labor is authorized to investigate and resolve complaints of violation of the FMLA. An eligible employee may bring a civil action against an employer for violations. For additional information, contact the nearest office of the U.S. Department of Labor's Wage and Hour Division.

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Raymore-Peculiar R-II School District

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