

## **4152.6/4252.6      FAMILY AND MEDICAL LEAVE ACT POLICY AND PROCEDURE**

It is the policy of the Salisbury Board of Education to comply with the Family and Medical Leave Act of 1993 in its employment practices. This policy is implemented through the following procedures. The purpose of the policy and procedures enclosed is to establish guidelines for leaves taken by employees under the Federal Family and Medical Leave Act of 1993 (FMLA).

### **I. DEFINITIONS**

- A. **“Instructional Employee”** means an employee 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, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily non-instructional employees.
- B. **“Parent”** means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined below. This term does not include parents “in law.”
- C. **“Spouse”** means a person with whom an individual entered into marriage as defined or recognized under State law for purposes of marriage in the State where the marriage occurred, including same-sex marriage or common law marriage in States where it is recognized. If the marriage was entered into outside of any State, the marriage will be recognized if it is valid in the place where it was entered into and could have been entered into in at least one State.
- D. **“Son or daughter”** means a biological adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18 or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time that FMLA leave is to commence.
- E. **“Son or daughter of a covered servicemember”** means a covered servicemember’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis and who is of any age.
- F. **“Son or daughter on covered active duty or call to covered active duty status”** means the employee’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.
- G. **“Next of Kin”** of a current servicemember is the nearest blood relative, other than the current service member's spouse, parent, son, or daughter, the following order of priority:

1. a blood relative who has been designated in writing by the servicemember as the next of kin for FMLA purposes
2. a blood relative who has been granted legal custody of the servicemember
3. brothers and sisters
4. grandparents
5. aunts and uncles
6. first cousins

H. **“Paraprofessional”** is a school employee who performs duties that are instructional in nature or delivers either direct or indirect services to students and parents and serves in a position for which a teacher has ultimate responsibility for the design and implementation of educational programs and services.

I. **“Serious Health Condition”** that would entitle an employee to FMLA leave is one involving continuing treatment by a health care provider that results in a period of incapacity of more than three consecutive calendar days and consists of either treatment two or more times by a health care provider or treatment by a health care provider on at least one occasion followed by a regimen of continuing treatment under the supervision of the health care provider.

Over-the-counter medication, bed rest, taking of fluids, exercise, and other activities that can be initiated without a visit to a health care provider do not constitute continuing treatment.

Chronic conditions such as asthma and diabetes are considered a serious health condition even if individual episodes of incapacity do not last more than three days. Furthermore, conditions need not be chronic or long-term when the condition is not ordinarily incapacitating, but multiple treatments are given. The condition would likely result in a period of incapacity of more than three calendar days in the absence of medical intervention. Regarding long-term chronic conditions, the condition need not be incurable. The condition may involve a permanent or long-term incapacity and be one for which treatment may not be effective. (29 C.F.R. 825.114.)

J. **“Health Care Provider”** includes any health care provider recognized by the employer or accepted by the employer's group health plan. It also includes clinical social workers. (29 C.F.R. 825.118.)

## II. ELIGIBILITY

An employee is eligible for FMLA leave if (a) the employee has been employed by the school district for at least 12 months (52 weeks); (b) has at least 1,250 actual hours of service (i.e., actual work hours) during the 12 months immediately preceding the start of leave; and (c) works at a site

where a minimum of 50 employees are employed by the school district within a 75-mile radius of that worksite as of the date of the leave request.

Full-time Instructional Employees (i.e., classroom teachers) meet the 1,250 hours of service requirement unless the school district can demonstrate that the teacher did not meet the 1,250 hours of service requirement in the 12 months before the start of the leave.

A school paraprofessional in Connecticut is eligible to benefits equal to those under the federal FMLA if such paraprofessional was employed for at least one year and has worked 950 hours over the previous twelve-month period preceding the commencement of the leave.

Pursuant to USERRA, an employee returning from fulfilling their 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 they worked the 1,250 hours of service in the District. (§825.110)

For the purposes of FMLA leave, a 12-month period is the 12 months measured backward from the date the employee takes any FMLA leave. The 12 months of employment need not be consecutive.

### **III. FMLA LEAVE ENTITLEMENTS**

Leaves under the FMLA may be taken for any of the following reasons:

- A. For the birth of a son or daughter, and to care for (bond with) the newborn;
- B. For the placement of a child with the employee for adoption or foster care, and to care for (bond with) the child after placement;
- C. To care for the employee's spouse, son or daughter, or parent with a serious health condition;
- D. The employee's serious health condition (including incapacity due to pregnancy or prenatal care) makes the employee unable to perform one or more essential functions of their current position.
- E. For qualifying exigencies arising out of the foreign deployment of the employee's spouse, son, daughter, or parent who is a member of the Armed Forces (including the National Guard and Reserves) and who is on covered active duty or has been notified of an impending call or order to covered active duty. For purposes of qualifying exigency leave, an employee's son or daughter on covered active duty refers to a child of any age. Qualifying exigencies may include:
  - 1. Short-notice deployment activities (if a member receives seven or fewer calendar days' notice before the date of deployment);
  - 2. Military events and related activities;

3. Childcare and related activities;
4. Care of the military member's parent
5. Financial and legal arrangements;
6. Counseling activities;
7. Rest and recuperation;
8. Post-deployment activities; and
9. Additional activities that the employee and employer agree on is a qualifying exigency.

#### F. Military Caregiver Leave

Military caregiver leave allows an eligible employee who is the spouse, parent, son or daughter, or "next of kin" of a covered servicemember or veteran with a serious injury or illness to take up to a total of 26 workweeks of unpaid leave during a single 12-month period to provide care.

##### Leave Entitlements:

1. To care for a family member who is a covered servicemember with a serious injury or illness.
  - a. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list for a serious injury or illness.
  - b. A serious injury or illness is one that is incurred by a servicemember in the line of duty on active duty that may cause the servicemember to be medically unfit to perform the duties of their office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the servicemember's active duty and that were aggravated by service in the line of duty on active duty.

2. To care for a family member who is a covered veteran with a "serious injury or illness."

A veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness is a covered veteran if they:

- a. was a member of the Armed Forces (including a member of the National Guard or Reserves);
- b. was discharged or released under conditions other than dishonorable; and

- c. was discharged within the five years before the eligible employee first takes FMLA military caregiver leave to care for the veteran.

#### **IV. LENGTH OF LEAVE**

##### **A. General Rules**

Except in the case of Military Caregiver Leave to care for a covered servicemember or veteran with a serious injury or illness, an eligible employee is entitled to take up to a maximum of twelve (12) workweeks of FMLA leave during any 12-month entitlement period.

Leave for a qualifying exigency involving Rest and Recuperation (R&R) is limited to a maximum of 15 days beginning on the date the military family member commences each instance of R&R leave. An eligible employee is entitled to up to 26 workweeks of leave to care for a covered servicemember with a serious injury or illness during a single 12-month period.

The 12-month entitlement period for FMLA leave is measured forward from the date an employee begins leave that qualifies under the FMLA. Note: The single 12-month period to care for a covered servicemember must be measured from the first day of FMLA leave forward.

Suppose leave is taken for more than one of the qualifying reasons listed above. In that case, the employee is entitled to a combined total of 12 workweeks of leave during any 12-month entitlement period unless one of the reasons is to care for a covered servicemember with a serious injury or illness. Suppose one of the reasons is to care for a covered servicemember with a serious injury or illness. In that case, the employee is entitled to a combined total of 26 workweeks of leave during the single 12-month period but is still limited to a combined maximum of 12 workweeks for leave taken for any reason other than to care for a covered servicemember with a serious injury or illness.

##### **B. Both Spouses Working for The School District**

Eligible spouses who work for the same employer are limited to a combined total of 12 workweeks of leave in a 12-month period for the following FMLA qualifying reasons:

1. the birth of a child (and to bond with the newborn child),
2. the placement of a healthy child by adoption or for foster care, and
3. to care for a parent with a serious health condition.

However, each spouse may take up to twelve (12) weeks of FMLA leave for other FMLA-qualifying reasons, such as for their serious health condition or caring for a child with a serious health condition. Suppose the spouses have exhausted their combined 12-week entitlement and one or both employees need FMLA leave for the reason that is not subject to

the combined limit. In that case, the spouse is entitled to additional FMLA leave up to the individual 12-week entitlement.

Both spouses who are eligible for FMLA leave are limited to a combined total of 26 workweeks of leave during the single 12-month period if one of the reasons is to care for a covered servicemember with a serious illness or injury, or if military caregiver leave is one of the reasons for leave. When spouses take military caregiver leave, and other FMLA leave in the same leave year, each spouse is subject to the combined limitations for the reasons for leave listed above.

Which FMLA qualifying leave reasons are not subject to the combined limitation?

1. The care of a spouse, son, or daughter with a serious health condition.
2. A serious health condition that makes the employee unable to perform the essential functions of their job.
3. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on "covered active duty."

## **V. CONDITIONS FOR USE OF LEAVE**

### **A. Block of Time, Intermittent, and Reduced Schedule Leave**

As explained below, an employee may take FMLA leave in a block of time, intermittent, or reduced schedule.

1. "Block of Time" FMLA leave is leave for a continuous period of time. Such leave may be taken for any reasons permitted by the FMLA.
2. "Intermittent" leave means leave taken in separate periods of time for a single qualifying FMLA reason. It may include periods of leave ranging from an hour or more to several weeks. Examples of intermittent leave include (a) leave taken on an occasional or "as needed" basis for medical appointments, (b) leave taken for a partial or full workday, or several workdays at a time, spread over a period of several months for treatment or episodic flare-ups of a chronic condition.
3. "Reduced Schedule" leave is leave that reduces the employee's usual number of scheduled work hours per workday or per workweek for some time. For example, an employee may request leave one day per week over a period of time or work part-time for several weeks for their serious health condition. The employee can assist in caring for a parent with a serious health condition.

Intermittent or reduced schedule leave may be taken (a) when medically necessary for an employee's or covered family member's serious health condition or a covered servicemember's serious illness or injury, and (b) the need for leave can best be accommodated through an

intermittent or reduced schedule leave. More specifically, FMLA leave may be taken intermittently or on a reduced schedule basis:

1. When medically necessary for planned or unanticipated medical treatment, or for treatment that is required by a health care provider periodically (e.g., leave taken for chemotherapy or prenatal examinations);
2. For recovery from a serious health condition or a covered servicemember's serious injury or illness;
3. To provide care or psychological comfort to a covered family member or a covered servicemember;
4. Where the employee or covered family member is incapacitated from performing the essential functions of the position because of a chronic serious health condition, or because of a serious injury or illness of a covered servicemember;
5. Due to a qualifying exigency; or
6. To effectuate the placement of a child for adoption or foster care before the placement of the child.

#### **B. Scheduling Planned Medical Treatment**

When planning medical treatment for foreseeable FMLA leave, an employee must consult with their supervisor and make a reasonable effort to schedule the treatment not to disrupt the school district's operations unduly, subject to the health care provider's approval. Ordinarily, the employee should consult with the supervisor before scheduling the treatment to work out a treatment schedule that best suits the needs of the school district and the employee.

#### **C. Temporary Transfer**

If foreseeable intermittent or reduced schedule leave is medically required based upon the planned medical treatment of the employee or a family member, including during a period of recovery from a serious health condition, or if the school district agrees to permit intermittent or reduced schedule leave for the birth of a child or placement of a child for adoption or foster care, the school district may temporarily transfer the employee to another job with equivalent pay and benefits that better accommodates the type of leave requested.

Also, special arrangements may be required of any instructional employee who needs to take intermittent or reduced schedule leave, which will involve absence for more than twenty (20) percent of the total number of working during the period over which the leave will extend (for example, more than five days over five weeks). In such a case, the instructional employee may be given the choice of being temporarily transferred to another job or remaining on leave for the duration of the planned medical treatment.

#### **D. Leave Taken by Instructional Employees Near the End of an Academic Term**

The school district may invoke the following rules if an instructional employee takes FMLA near the end of an academic term. For this purpose, there are two academic terms per school year: (1) the end of the calendar year when the school district breaks for the holidays, and (2) the end of the school year in the spring.

1. Suppose a leave taken by an instructional employee for any reason begins more than five (5) weeks before the end of an academic term. In that case, the school district may require the employee to continue the leave until the end of the academic term if the leave will last at least three (3) weeks. The employee would return to work during the three weeks before the end of the academic term.
2. Suppose the instructional employee begins a leave during the five weeks preceding the end of an academic term for a reason other than the employee's own serious health condition or a qualifying exigency. In that case, the school district may require the employee to continue taking leave until the end of the academic term if the leave will last more than two (2) weeks. The employee would return to work during the two weeks before the end of the academic term.
3. Suppose the instructional employee begins a leave during the three weeks preceding the end of an academic term for a reason other than the employee's own serious health condition or a qualifying exigency. In that case, the school district may require the employee to continue taking leave until the end of the academic term if the leave will last more than five (5) working days.

If the school district requires an instructional employee to remain on leave under any of the provisions above, the leave will not count against the employee's FMLA leave entitlement.

#### **E. Procedures for Requesting FMLA Leave**

An employee must notify the Principal and the Human Resources Dept. of the need for a family or medical leave at least thirty (30) days before the leave is to begin if the need for the leave is foreseeable based on the expected birth, placement for adoption for foster care, planned medical treatment for the employee's or family member's serious health condition, or the planned medical treatment for a serious injury or illness of a covered servicemember. If 30 days notice is not practicable, the employee must provide notice as soon as possible under the circumstances, usually the same day or the next business day after the employee becomes aware of the need for FMLA leave. An employee must provide notice if the foreseeable leave is for a qualifying exigency as soon as practicable. The employee must provide enough information to enable the Human Resources Dept. to determine if the leave qualifies for FMLA protection and the anticipated timing and duration of the leave. When the approximate timing of the need for leave is not foreseeable, an employee must provide notice as practicable under the circumstances. If the need for FMLA leave is for the same reason that the school district

has previously designated as FMLA leave, the employee must either mention the reason for the leave or state that the leave is needed for “FMLA.”

#### **F. Other Employee Notice Obligations**

The employee should follow the school district’s normal procedures for providing notice of the need for leave. The employee must provide sufficient information to make the supervisor aware that the employee needs FMLA-qualifying leave and must inform the supervisor and the school district’s Human Resources Dept. of the anticipated timing and duration of the leave. If the requested leave is for a reason for which leave was previously designated as FMLA leave by the school district, the employee must specifically reference the reason for the leave or the need for “FMLA” leave. In addition, an employee must inform their Principal and the District’s Human Resources Dept. as soon as practicable if the date(s) of scheduled leave change or are extended, or if the date(s) were initially unknown. In addition, the District may require an employee on FMLA leave to report periodically to their supervisor or the District’s Human Resources Dept. regarding the employee’s status and intent to return to work based on the facts and circumstances related to the employee’s leave situation. In addition, an employee must provide reasonable notice (*i.e.*, within two business days) of any changed circumstances that alter the date on which the employee will return to work.

The supervisor must promptly (the same day) notify the school district’s Human Resources Department that an employee has requested leave that may qualify under FMLA. Human Resources will coordinate the processing of all FMLA leave paperwork.

#### **G. Certifications/Documentation Required**

For leaves taken for any FMLA-qualifying reason, an employee may be required to submit a completed certification form supporting the need for leave. The appropriate form will be provided to the employee. The employee must submit a complete and sufficient certification form as required within fifteen (15) calendar days of receiving the request for the completed certification. If it is not practicable for the employee to provide the completed form by the due date despite the employee’s diligent, reasonable faith efforts, the employee must inform Human Resources of the reason for the delay. FMLA-protected leave may be delayed or denied if the employee does not provide a complete and sufficient certification as required promptly, and other adverse employment consequences may be imposed. An employee may also be required to submit additional documentation (e.g., establishing a family relationship or military, active duty orders).

Recertifications may be required under the following circumstances:

1. Every six months or annually in connection with an FMLA-related absence by the employee if the previous certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six or 12 months;

2. The circumstances described by the previous certification have changed significantly (*e.g.*, the duration or frequency of the absence, the nature or severity of the illness, complications);
3. Whenever the school district receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

#### **H. School District Notice Requirements**

Once the school district becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the school district will notify the employee if they are eligible for FMLA leave and, if eligible, will also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the school district will give a reason for ineligibility. After a complete and sufficient medical certification is received, the school district will notify the employee if their leave qualifies as FMLA leave and, if so, how much leave will be designated as FMLA leave (if the amount of FMLA leave is known).

#### **I. Substitution of Paid Leave**

An employee must "substitute" any available paid leave during the FMLA leave. To substitute means that the unpaid FMLA leave and paid leave to run concurrently. Any paid leave taken for this reason will also be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period. The appropriate conditions for using paid leave will follow the employee's Collective Bargaining Agreement or Employment Agreement.

The rules regarding the substitution of paid leave do not apply if an employee receives compensation through either disability insurance, or workers' compensation payments, if applicable. An employee may/may not supplement disability insurance payments with available paid leave. An employee may/may not supplement workers' compensation payments with available paid leave. Paid leave will be substituted after any period of disability insurance compensation or workers' compensation payments if the employee remains on FMLA leave thereafter.

#### **J. Group Health Benefits During FMLA Leave**

During any FMLA leave, an employee's coverage under any group health insurance plan will be maintained on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. The employee must continue to make any regular contributions to the cost of the health insurance premiums.

If paid leave is substituted for FMLA leave, the employee's share of group health plan premiums must be paid by the method generally used during paid leave (usually payroll deduction). An employee on unpaid FMLA leave must make arrangements to pay the normal employee portion of the insurance premiums to maintain insurance coverage. If the employee's premium payment is more than 30 days late, the employee's coverage may be dropped. The

employer must provide written notice to the employee that the payment has not been received and allow at least 15 days after the date of the letter before coverage stops.

Suppose an employee does not return to work after the expiration of the FMLA leave. In that case, the employee will be required to reimburse the school district for the school district's share of the health insurance premiums that it submitted during any unpaid FMLA leave unless the reason the employee does not return is due to:

1. the continuation, recurrence, or onset of either a serious health condition of the employee or the employee's family member or a serious injury or illness of a covered servicemember, which would otherwise entitle the employee to leave under FMLA; or
2. other circumstances beyond the employee's control.

#### **K. Other Employee Benefits During FMLA Leave**

Other employee benefits such as dental insurance, life insurance, and disability insurance will be maintained on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. The employee must continue to make any regular contributions to the cost of the health insurance premiums.

During any unpaid portion of the instructional employee's FMLA leave, the employee is responsible for any CT Teachers' Retirement Board contributions.

#### **VI. Outside Employment and Vacation During FMLA Leave**

An employee on FMLA leave for their serious health condition may not engage in employment for any other employer or engage in self-employment while on leave. In addition, an employee on FMLA leave for their serious health condition may not engage in leisure activities or personal travel (*e.g.*, vacation) that is inconsistent with the medical condition that incapacitates the employee from working their job. Suppose the employee is using paid sick leave that is running concurrently with FMLA leave. In that case, the employee must remain in the general vicinity of their residence during the period of such leave. Dishonesty related to such activities (*i.e.*, work or personal travel) violates this policy.

**VII. Return to Work After FMLA Leave** An employee who returns to work following the expiration of a family or medical leave is entitled to return to the job held before the leave or to an equivalent position with equivalent pay, benefits, and working conditions. Employees returning to work for their serious health condition will be required to provide a completed fitness-for-duty certification form, which certifies that the health condition which created the need for the leave no longer renders the employee unable to perform the essential functions of the job. If such certification is required but not received, the employee's return to work may be delayed until the certification is provided, or reinstatement may be denied.

## **VIII. Enforcement and Protection**

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer if they believe that their rights under FMLA have been violated. An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

### Legal References:

Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., as amended  
Federal Regulations, 29 C.F.R. Part 825, as amended.

Approved by the Salisbury Board of Education: March 21, 2022