

POLICY 404 – FAMILY AND MEDICAL LEAVE FOR SCHOOL DISTRICT EMPLOYEES

I. PURPOSE

The purpose of this policy is to provide for family and medical leave to school district employees in accordance with the Family and Medical Leave Act of 1993 (FMLA) and to ensure compliance with parenting leave requirements under state law and the Americans with Disabilities Act (ADA).

II. GENERAL STATEMENT OF POLICY

Regular and predictable attendance is presumed to be an essential function of all employment within the school district. At the same time, employee health needs, family circumstances and other contingencies can in qualifying circumstances afford employees a right to take temporary leave of their employment. The following provisions regarding family, medical leave and/or disability leave are adopted by the school district, consistent with the requirements of the FMLA, the ADA and the requirements of Minnesota parenting leave laws.

III. CIRCUMSTANCES PERMITTING FMLA LEAVE

- A. 12-Week Leave: Eligible employees can take up to 12 weeks of unpaid/paid, job-protected leave in a 12-month period for the following reasons:
- 1) birth of the employee's child and to care for such child where such leave is taken within 12 months of the child's birth;
 - 2) placement of an adopted or foster child with the employee where such leave is taken within 12 months of the child's adoption;
 - 3) to care for the employee's spouse, son, daughter, or parent with a serious health condition;
 - 4) the employee's serious health condition makes the employee unable to perform the functions of the employee's job; and/or;
 - 5) any qualifying exigency arising from the employee's spouse, son, daughter, or parent being on covered active duty, or notified of an impending call or order to covered active duty in the Armed Forces.
- B. 26-Week Leave for Care of Military Servicemember: In addition to the basic FMLA leave entitlement stated above, an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered servicemember is entitled to take up 26 weeks of leave during a single 12-month period to care for the servicemember with a serious injury or illness. Leave to care for a servicemember shall only be available during a single 12-month period and, when combined with other FMLA-qualifying leave, may not exceed 26 weeks during the single 12-month period. The single 12-month period begins on the first day an eligible employee takes leave to care for the injured servicemember.
- C. Employees Eligible for FMLA Leave: In order to be eligible for FMLA leave, the employee must have worked for the School District for at least 12 months and must have worked at least 1,250 hours during the 12-month period immediately preceding the requested leave.
- D. Qualifying Reasons for Leave: Whether the employee's leave request qualifies under the FMLA will be determined in accordance with FMLA regulations (29 CFR Pt. 825). Depending on the nature of FMLA leave sought, employees may be required to submit medical certifications supporting their need for

FMLA-qualifying leave (i.e. medical certifications documenting the existence of a “serious health condition or documentation of active duty orders for family member).

IV. EMPLOYEE NOTICE REQUIREMENTS FOR FMLA LEAVE

- A. Method of Notification: Employees who take FMLA leave must notify the School District of their need for FMLA leave. To trigger FMLA leave protections, employees must inform a Human Resources Generalist of the need for an FMLA-qualifying leave and the anticipated timing and duration of the leave, if known. Employees may do this by either requesting FMLA leave specifically or by explaining the reasons for leave so as to allow the School District to determine that the leave is FMLA-qualifying. Calling in “sick,” without providing the reasons for the needed leave, will not be considered sufficient notice for FMLA leave under this policy.
- B. Timing of Notice: 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, or the approximate timing of the need for leave is not foreseeable, employees must provide the School District notice of the need for leave as soon as practicable under the facts and circumstances of the case. Employees who fail to give 30 days notice for foreseeable leave without a reasonable excuse for the delay, or who otherwise fail to satisfy FMLA notice obligations, may have FMLA leave delayed or denied.

V. FMLA PROTECTIONS

While employees are on FMLA leave, the School District will continue health insurance coverage as if the employee was not on leave. When an employee returns from FMLA leave, they must be restored to the same job that they held when the leave began or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions. Unless otherwise provided for in a collective bargaining agreement or employment contract, the employee is not guaranteed the actual job they held prior to the leave. The School District will not interfere with an employee’s FMLA rights or retaliate against an employee for using or trying to use FMLA leave, for opposing any practice made unlawful by the FMLA, or for being involved in any proceeding under or related to the FMLA.

VI. MISCELLANEOUS PROVISIONS RELATED TO FMLA LEAVE

The following provisions apply to employees eligible to receive FMLA leave:

- A. Certification of Qualifying Leave: Eligible employees are required to provide certification when they request leave for: the employee’s own serious health condition; the serious health condition of the employee’s parent, spouse, son or daughter, and for military family leave.
- B. Leave Allotted within 12 Month Period: An employee may take FMLA leave in periods of weeks, days or for a minimum of one (1) hour. The School District calculates an employee’s “leave year” based upon a rolling 12-month period measured backward from the date an employee uses FMLA leave (i.e. each time an employee takes FMLA leave, the remaining leave is the balance of the 12 weeks not used during the immediately preceding 12 months).
- C. Maintenance of Health Benefit: An employee is entitled to the continuation of group health insurance coverage/benefits during FMLA leave on the same terms as if he or she had continued to work. If the employee’s FMLA leave is paid, the employee’s contribution to their health benefit will

be paid by payroll deduction. If the employee's FMLA leave is unpaid, the employee will be required to pay their share of premium payments at the same time as it would be made if by payroll deduction or by another method voluntarily agreed to by the District and the employee.

If an employee's premium payment is more than 30 days late, the District may drop the employee's health insurance coverage. In order to drop insurance coverage for an employee whose premium payment is late, the District will provide written notice to the employee that the payment has not been received, and that his or her insurance coverage will end at a specified date at least 15 days after the date of the written notice unless payment is received by that date. This notice must be mailed to the employee at least 15 days before coverage is to cease.

- D. Light Duty Alternative: The District may offer an employee a light duty position in lieu of leave necessitated by incapacity; however, the employee may decline the light duty position and opt for FMLA-protected leave until able to return to the same or equivalent job he or she left or until his or her FMLA leave entitlement is exhausted. When an employee voluntarily accepts a light duty assignment rather than taking FMLA leave, the time the employee works in the light duty assignment will not count as FMLA leave. Additionally, the employee has the right to be restored to the same or an equivalent position that the employee held at the time the employee's FMLA leave commenced, provided that the employee is able to perform the essential functions of the position. However, an employee's right to restoration while in a light duty assignment expires at the end of the 12-month leave year that the employer uses to calculate FMLA leave. If an employee has used their full 12 workweeks of FMLA leave in a 12-month period and then voluntarily accepts a light duty position because the employee is unable to resume working in his or her original position, the employee no longer has a right under the FMLA to restoration.
- E. Reasonable Efforts to Schedule Intermittent or Reduced Schedule Leave in a Non-disruptive Manner: Employees are expected to make reasonable efforts to schedule leave resulting from planned medical treatment and other leave that is foreseeable so as not to unduly disrupt the operations of the school district.
- F. Spouses: Spouses who both work for the School District are entitled to a combined total of 12 weeks leave in a 12-month period for the birth, adoption, or foster care placement of their child, or to care for a parent with a serious health condition. Both parents are entitled to take 12 workweeks of leave to care for a child with a serious health condition.
- G. Employee Use of Accrued Paid Leave: Unless otherwise agreed to by the District, when taking FMLA leave employees will be required to use accrued sick leave available to them under the terms of their collective bargaining agreement or employment contract. In circumstances where an employee is on leave receiving workers compensation, use of accrued paid leave will not be required by the District.
- H. Retroactive Designation of FMLA Leave: If the School District does not initially designate leave taken as FMLA leave, the District may retroactively designate the absence as FMLA leave so long as the School District provides appropriate notice to the employee that it will be designating past leave taken as FMLA qualifying and the retroactive designation does not cause harm or injury to the employee.
- I. Fitness-for-Duty Certification: To the extent consistent with applicable employment/collective bargaining agreements, the District may require employees who take leave for their own serious

health condition to obtain and present certification from the employee's health care provider that the employee is able to resume work prior to restoring an employee. The fitness-for-duty certification can be requested only for the health condition that caused the employee's need for FMLA leave. The employee is responsible for the cost of the fitness-for-duty certification. The District may delay restoration of the employee until they submit a required fitness-for-duty certification.

- J. Calculation of Leave Used: For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect (i.e. the week is counted as a week of FMLA leave). However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday. If an employee's leave is taken during a period where there is an intervening school break spanning one or more weeks (e.g. winter, spring or summer breaks) and the employee is generally not expected to report for work during the school break, the days of the extended school break do not count against the employee's FMLA leave entitlement.
- K. FMLA Leave Misuse or Fraud: Any employee who fraudulently applies for or obtains FMLA leave will not be protected by the FMLA's job restoration or maintenance of health benefits provisions and may be subject to disciplinary action, up to and including discharge from their employment.

VII. MINNESOTA PARENTAL LEAVE PROTECTIONS

An employee who is not eligible for parenting leave under Paragraphs III A (1) & (2) may qualify for a 12-week unpaid leave which is available to a biological or adoptive parent in conjunction with the birth or adoption of a child, or to a female employee for prenatal care or incapacity due to pregnancy, childbirth, or related health conditions. The length of the leave will be determined by the employee but must not exceed 12 weeks unless agreed by the School District. The employee may qualify if he or she has worked for the School District for at least 12 months and has worked an average number of hours per week equal to one-half of the full time equivalent during the 12-month period immediately preceding the leave. This leave is separate and exclusive of the family and medical leave described in the preceding paragraphs but may be reduced by any period of paid parental, disability, personal, or medical, or sick leave, or accrued vacation provided by the School District so that the total leave does not exceed 12 weeks, unless agreed by the School District, or leave taken for the same purpose under the FMLA. The leave taken under this section shall begin at a time requested by the employee. An employee who plans to take leave under this section must give the School District reasonable notice of the date the leave will commence and the estimated duration of the leave. For leave taken by a biological or adoptive parent in conjunction with the birth or adoption of a child, the leave must begin within 12 months of the birth or adoption; except that, in the case where the child must remain in the hospital longer than the mother, the leave must begin within 12 months after the child leaves the hospital.

VIII. ADA-DISABILITY LEAVE

Employees who are not eligible for leave under Paragraphs III & V or employees who have exhausted their leave under these paragraphs may be entitled to leave under the Americans with Disabilities Act ("ADA") or the Minnesota Human Rights Act ("MDHR") in certain circumstances. Whether an employee is afforded leave as a reasonable accommodation under the ADA or the MDHR will be determined through an interactive process between the employee and the School District. Prolonged leaves of an indefinite duration are in most circumstances not considered to be a reasonable accommodation.

Policy Adopted January 28, 2020

Legal References

Minn. Stat. §§ 181.940-181.944 (Parenting Leave)

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

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

Americans with Disabilities Amendment Act (ADAAA) (42 USC 12101 et. Seq. and 28 CFR Pt. 35)