



4510.06: LEAVES OF ABSENCE - FAMILY MEDICAL LEAVE ACT (FMLA)

I. Entitlement to Unpaid Leave under the FMLA.

A. Eligibility for Family/Medical Leave. Any employee with 12 months or more of service who worked 1,250 hours or more in the immediately preceding 12 months is eligible for a Family Leave and Medical Leave Act (FMLA). An eligible employee shall be entitled to a total of 12 work weeks of leave during any 12-month period for one or more of the following reasons:

- 1. The birth of a son or daughter of an employee and in order to care for such son or daughter;**
- 2. The placement of a son or daughter with an employee for adoption or foster care;**
- 3. To care for a spouse, son, daughter, or parent of an employee if such spouse, son, daughter, or parent has a serious health condition;**
- 4. A serious health condition that makes an employee unable to perform the functions of the position of such employee; and/or**
- 5. A qualifying exigency arising out of employee's spouse, son, daughter or parent being on covered active duty or who has been notified of an impending call or order to covered active duty;**

An employee's cumulative absences under this policy may not exceed 12 weeks in any 12 month period. The 12-month period shall be measured backward from the date the employee uses the FMLA leave. If employee's spouse also works for the District, their combined FMLA leave for any purpose other than their own serious health condition or that of a child or spouse shall be limited to 12 weeks in a 12-month period, except as hereinafter provided.

B. Military Family Leave under the Family and Medical Leave Act. An eligible employee shall be entitled to FMLA leave for any qualifying exigencies arising from the foreign deployment of the employee's spouse, son, daughter or parent with the Armed Forces or to care for a servicemember with a serious injury or illness if the employee is the servicemember's spouse, son, daughter, parent or next of kin as follows:

- 1. Thirty (30) days during the time the deployment order is in effect for a spouse or parent of the employee as set forth in the Nebraska Family Military Leave Act;**
- 2. A total of 12 work weeks of leave during any 12-month period because of any qualifying exigency arising out of the fact that a spouse, son, daughter or parent is on covered active duty or has been notified of an impending call or order to covered active duty in the Armed Forces; or**
- 3. A total of 26 work weeks of leave during any 12-month period to care for a covered servicemember who is a spouse, son, daughter, parent, or next of kin, when the covered servicemember is:**
 - i. A member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, or is otherwise in outpatient status or on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty, or existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty in the Armed Forces, and which may render the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating.**
 - ii. A veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy, for a qualifying injury or illness, as defined by the Secretary of Labor, that was incurred by the member in the line of duty on active duty in the Armed Forces, or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that manifested itself before or after the member became a veteran.**

C. Expiration of Entitlement for Child Birth or Adoption Leave. The entitlement to leave for child birth or adoption leave shall expire at the end of the 12-month period beginning on the date of such birth or placement.

D. Combined Leave Total. An eligible employee shall be limited to a combined total of 26 work weeks of leave for any FMLA-qualifying reasons during the single 12-month period for the combination of Family/Medical Leave and Military Family Leave.

E. Paid and Unpaid Leave. If the District provides paid leave for a lesser period of time, the additional weeks of leave necessary to attain the days or work weeks of leave required under this Rule will be provided without compensation.

- 1. The District shall require the employee to substitute any of the employee's available paid sick leave for any part of the time period for such leave. An employee may elect to utilize available vacation time for FMLA leave if available.**
- 2. No extensions beyond the required periods of leave for any given 12-month period will be allowed without prior District approval. However, if an employee uses paid leave under circumstances that are determined by the District not to qualify as FMLA leave, the leave will not count against the weeks of FMLA leave to which the employee is entitled.**
- 3. If any of the above provisions are subject to a collective bargaining agreement, and provided that such provisions do not impose additional limitations or violate state or federal law, the provisions of the collective bargaining agreement shall prevail.**

F. Intermittent or Reduced Leave.

1. Immediate Family or Employee Health or Servicemember Family Leave for Instructional Personnel.

Subject to the following paragraphs, in any case in which an eligible District employee, employed principally in an instructional capacity for the District, requests leave for immediate family, employee health, or servicemember family leave that is foreseeable based on planned medical treatment, and the employee would be on leave for greater than 20% of the total number of working days in the period during which the leave would extend, the District may require that such employee elect either:

- a. To take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment; or**
- b. To transfer temporarily to an available alternative position offered by the District for which the employee is qualified and that:**
 - i. Has equivalent pay and benefits; and**
 - ii. Better accommodates recurring periods of leave than the employee's regular employment position.**

2. Immediate Family or Employee Health or Servicemember Family Leave for Non-Instructional Personnel.

Leave for immediate family, employee health, or servicemember family leave may be taken intermittently or on a reduced leave schedule when medically necessary. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction of the total leave to which the employee is entitled beyond the amount of leave actually taken. If an employee requests intermittent leave, or leave on a reduced leave schedule under this section that is foreseeable based on planned medical treatment, the District can require such employee to transfer temporarily to an available alternative position offered by the District for which the employee is qualified and that:

a. Has equivalent pay and benefits; and

b. Better accommodates recurring periods of leave than the employee's regular employment position.

G. Birth or Adoption Leave. Birth or adoption leave shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the District agree otherwise.

II. Employee's Notice Requirement for Births or Adoptions. In any case in which the necessity for leave for child birth or adoption leave is foreseeable based on an expected birth or placement, the employee shall provide the District Human Resources Office with not less than 30 days' notice before the date the leave is to begin of the employee's intention to take leave, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as soon as is practicable.

III. Requirement for Health Leave or Servicemember Family Leave.

A. In any case in which the necessity for leave for immediate family, employee health, or servicemember family leave is foreseeable based on planned medical treatment, the employee:

1. Shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the District, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, parent, or next of kin of the employee, as appropriate; and

2. Shall provide the District Human Resources Office with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of such treatment requires leave to begin in less than 30 days, the employee shall provide such notice as soon as is practicable.

B. In any case in which the necessity for leave for an impending family member's call to covered active duty is foreseeable, whether because the spouse, or a son, daughter, or parent of the employee is on covered active duty, or because of notification of an impending call or order to covered active duty in the Armed Forces, the employee shall provide such notice to the District as is reasonable and practicable.

IV. Certification for Serious Health Condition Leave. The District shall require that a request for leave for immediate family or employee health be supported by a medical certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, as appropriate, which sets forth the information required by 29 C.F.R. § 825.306(a).

A. Clarification and Authentication. The District may contact the health care provider for purposes of clarification and authentication of the medical certification, whether an initial certification or recertification, after the employee has been given the opportunity to cure deficiencies and as provided in 29

C.F.R. § 825.307(a). It is the employee's responsibility to provide the District with a complete and sufficient medical certification and to clarify the medical certification if necessary.

B. Second Opinion. In any case in which the District has reason to doubt the validity of the medical certification, the District may require, at the expense of the District, that the eligible employee obtain the opinion of a second health care provider designated or approved by the District concerning any information certified above for such leave. A health care provider so designated by the District shall not be employed on a regular basis by the District.

C. Resolution of Conflicting Opinions. In any case in which the second opinion described above differs from the opinion of the original certification provided under this Rule, the District may require, at the expense of the District, that the employee obtain the opinion of a third health care provider designated or approved jointly by the District and the employee concerning the information so certified under this Rule. The opinion of the third health care provider concerning the information certified under this Rule shall be considered to be final and shall be binding on the District and the employee.

D. Recertifications. The District may require that the eligible employee obtain recertification no more often than every thirty days in accordance with 29 C.F.R. § 825.308.

V. Certification for Qualifying Exigency and Military Caregiver Leave.

The District shall require that for a request for qualifying exigency or military caregiver leave, the employee provide a copy of the documentation issued by the military or a health care provider certification, and the applicable Department of Labor forms or another District form containing the same basic information.

VI. Spouses Employed by the District. In any case in which a husband and wife are both eligible for leave under this Rule are both employed by the District, the aggregate number of work weeks to which both may be entitled will be limited to 26 work weeks during any single 12-month period for the care of a servicemember with a serious injury or illness referred to as "military caregiver leave", if each spouse is a parent, spouse, son or daughter or next of kind of the servicemember.

Eligible spouses who are both employed by the District are each entitled to up to 12 work weeks of FMLA in a 12-month period without regard to the amount of FMLA leave their spouse uses for the following FMLA qualifying reasons:

A. For child birth and bonding with the newborn child, or adoption and bonding with the newly placed child, or immediate family health leave;

B. The care of a spouse or son or daughter with a serious health condition;

C. A serious health condition that makes the employee unable to perform the essential functions of his or her job; and

D. 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."

VII. Employment and Benefits Protection.

A. Restoration to Position. Except as otherwise provided, any eligible employee who takes leave under this Rule for the intended purpose of the leave shall be entitled, on return from such leave:

- 1. To be restored by the District to the position of employment held by the employee when the leave commenced; or**
- 2. To be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. For purposes of determinations relating to restoration to an equivalent position, such determination shall be made on the basis of established District board policies and practices and collective bargaining agreements.**

B. Employment Benefits. The taking of leave shall not result in the loss of any employment benefits accrued prior to the date on which the leave commenced.

C. Limitations. Nothing in this section shall be construed to entitle any restored employee to:

- 1. The accrual of any seniority or employment benefits during any period of leave; or**
- 2. Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.**

D. Periodic Reporting. The District may require an employee on child birth or adoption, immediate family, or employee health leave to report periodically on the status and intention of the employee to return to work.

VIII. Maintenance of Employee Benefits.

A. Coverage. Except as provided in the next succeeding paragraph, during any period that an eligible employee takes leave under this Rule, the District shall maintain coverage under the applicable benefit plan(s), including health, dental, and vision, for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave.

B. Failure to Return from Leave. The District may recover the premium that the District paid for maintaining coverage for the employee under such applicable benefit plan(s) during any period of unpaid leave if:

1. The employee fails to return from leave under this Rule after the period of leave to which the employee is entitled has expired; and

2. The employee fails to return to work for a reason other than:

i. The continuation, recurrence, or onset of a serious health condition that entitles the employee to immediate family or employee health leave, or servicemember family leave; or

ii. Other circumstances beyond the control of the employee.

C. Certification. For a claim made under preceding paragraph VIII. B.2., the District may require a timely certification by the treating health care provider on a form provided by the District to be submitted to the District Human Resources Office.

IX. Rules Applicable to Periods near the Conclusion of an Academic Term. The following rules shall apply with respect to periods of leave near the conclusion of the District's academic term in the case of any eligible employee employed principally in an instructional capacity by the District:

A. Leave More than Five Weeks Prior to the End of Term. If the eligible employee begins leave under this Rule more than five weeks prior to the end of the academic term, the District may require the employee to continue taking leave until the end of the term, if:

1. The leave is of at least three weeks duration; and

2. The return to employment would occur during the three-week period before the end of such term.

B. Leave Less than Five Weeks Prior to the End of Term. If the eligible employee begins immediate family, employee health, child birth or adoption or servicemember family leave during the period that commences less than five weeks prior to the end of the academic term, the District may require the employee to continue taking leave until the end of such term, if:

1. The leave is of greater than two weeks duration; and

2. The return to employment would occur during the two-week period before the end of such term.

C. Leave Less than Three Weeks Prior to the End of Term. If the eligible employee begins immediate family, employee health, child birth or adoption or servicemember family leave during the period that commences less than three weeks prior to the end of the academic term and the duration of the leave is greater than five working days, the District may require the employee to continue to take leave until the end of such term.

X. Definitions.

A. Academic Term shall mean either of the two school semesters.

B. Covered Active Duty shall mean in the case of a regular component of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country, and in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in 10 U.S.C. § 101(a)(13)(B).

C. Covered Servicemember shall mean a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, or is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, or a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

D. Eligible Employee shall mean an employee who has been employed by the District for at least 12 months and for at least 1250 hours of service with the District during the previous 12-month period.

E. Employment Benefits shall mean all benefits provided or made available to District employees, regardless of whether such benefits are provided by a District practice or written policy or through an employee benefit plan.

F. Health Care Provider shall mean a doctor of medicine or osteopathy who is authorized to practice medicine or surgery, as appropriate, by the State in which the doctor practices or any other person determined by the Secretary of Labor to be capable of providing health care services.

G. Instructional Employees shall mean those whose principal function is to teach and instruct students in a class, small group, or on an individual basis. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants. This 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 noninstructional employees.

H. Next of Kin of a Covered Servicemember shall mean the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of

military caregiver leave under the FMLA.

I. Parent shall mean a biological, adoptive, step or foster father or mother of an employee or an individual who stood in loco parentis (i.e., in the place of a parent) to an employee when the employee was a son or daughter. This term does not include parents-in-law.

J. Reduced Leave Schedule shall mean a leave schedule that reduces the usual number of hours per workweek, or hours per work day, of an employee.

K. Serious Health Condition shall mean an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, or continuing treatment by a health care provider.

L. Serious Injury or Illness shall mean for members of the Armed Forces, including members of the National Guard or Reserves, an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces, or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the member medially unfit to perform the duties of their office, grade, rank, or rating, and shall mean for veterans who were members of the Armed Forces, including the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy, a qualified injury or illness, as defined by the Secretary of Labor, that was incurred by the veteran in the line of duty on active duty in the Armed Forces, or existed before the beginning of the veteran's active service and was aggravated by service in the line of duty on active duty in the Armed Forces, and that manifested itself before or after the member became a veteran.

M. Son or Daughter shall mean a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age or who is 18 years of age or older and incapable of self-care because of a mental or physical disability.

N. Spouse shall mean husband or wife as defined or recognized under State law for the purposes of marriage in the State where the employee resides.

O. Twelve-Month Period shall mean, for purposes of child birth or adoption, immediate family or employee health or impending family member call to covered active duty leave, the twelve-months constituting the school year which begins August 1 and ends July 31. For purposes of service member family leave, the term Twelve-Month Period shall mean the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends twelve months after that date.

P. Veteran shall mean the same meaning given the term in 38 U.S.C. § 101.

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Related Policies and Rules

[4510: Leaves of Absence](#)

[4510.01: Illness, Injury, Disability](#)

[4510.03: Business and Emergency Leave](#)

[4510.05: Leave of Absence Without Pay](#)

Legal Reference

Family and Medical Leave Act of 1993; 29 U.S.C. §§ 2601 to 2619; 29 C.F.R. §§ 825.100 to 825.800.;
Nebraska Family Military Leave Act, Neb. Rev. Stat. §§ 55-501 to 55-507