

FREDERICK COUNTY PUBLIC SCHOOLS	Reg. No. 300-42
Subject: FAMILY AND MEDICAL LEAVE (FMLA) / NON-MILITARY	Issued: 8/4/93
Preparing Office: Office of the Superintendent	Amended: 11/16/22

I. Policy

General Statement: The Family and Medical Leave Act (FMLA) entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons as outlined herein. The procedures outlined below support these rights afforded under the FMLA. ¹

II. Definitions

A. Eligible Employee

In general, the term "eligible employee" means: (1) A regular employee who has been employed for at least 12 months by the Frederick County Public Schools (FCPS) system; and (2) has been employed in and actively worked the equivalent of at least a 0.5 regular position during the 12-month period immediately preceding the commencement of the leave. (See Exhibit 1 at the end of this regulation) Temporary employees that have been employed for at least one year and worked 1,250 hours during the previous 12 months are eligible for Family and Medical Leave.

B. Health Care Provider

The term "health care provider" means 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 as defined by the United States Department of Labor to be capable of providing health care services.

C. Qualified Family Member

Covered family members under the Family and Medical Leave Act (FMLA) are the employee's spouse, son, daughter or parent.

- "Spouse" - a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a common law or same-sex marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States, if the marriage could have been entered into in at least one state.

¹ See 29 USC 2612(a)(1) The Family and Medical Leave Act of 1993, as amended.

- "Son or Daughter" - 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."
- "Parent" - 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.

D. Reduced Leave Schedule

The term "reduced leave schedule" means a leave schedule that decreases the usual number of hours per workweek, or hours per workday, of an employee.

E. Serious Health Condition

The term "serious health condition" means an illness, injury or impairment, or physical or mental condition that involves:

1. Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility; or
2. A period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to this same condition, that also involves continuing treatment by (or under the supervision of) a healthcare provider; or
3. Periods of incapacity or continuing treatment by (or under the supervision of) a health care provider for a chronic, permanent or long-term health condition; or
4. Absences for multiple treatments associated with restorative surgery or absences for treatments that if not received would likely result in more than three consecutive days of absence; or
5. Absences for prenatal care.

F. Continuing Treatment by Health Care Provider

The term "continuing treatment by a health care provider" means one or more of the following:

1. The employee or family member in question is treated two or more times for the injury or illness by a health care provider. Normally this would require visits to the health care provider or to a nurse or physician's assistant under direct supervision of the health care provider.
2. The employee or family member is treated for the injury or illness two or more times by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider, or is treated for

the injury or illness by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider – for example, a course of medication or therapy – to resolve the health condition.

3. The employee or family member is under the continuing supervision of, but not necessarily being actively treated by, a health care provider due to a serious long-term or chronic condition or disability which cannot be cured. Examples include persons with Alzheimer's, persons who have suffered a severe stroke, or persons in the terminal stages of a disease who may not be receiving active medical treatment.

G. Teacher

An employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches and special education instructional assistants. 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 noninstructional employees.

H. Twelve-Month Period

The 12-month period for the FCPS system begins on July 1 and extends through June 30.

I. Key Employee

A salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee's worksite.

III. Leave Eligibility

A. Entitlement for Leave

Eligible employees are entitled to a total of 12 workweeks of leave between each period of July-June for one or more of the following:

1. The birth of a child and/or to bond with the child within one year of birth.
2. The placement of a child with the employee for adoption or foster care and/or to bond with the child, within one year of placement.
3. To care for a spouse, child, or parent of the employee with a serious health condition.
4. A serious health condition that makes the employee unable to perform his or her job.

B. Benefits for the Employee

1. In accordance with school system policies and practices, eligible employees taking leave under the law are able to return to the same job or a job with equivalent status and pay.
2. The FCPS system will continue the employee's health benefits at the same level and conditions as if the employee had continued to work. If the employee chooses not to return to work for reasons other than a continued serious health condition, the employee is obligated to repay the premium that the FCPS system paid for the employee's and dependents' health coverage during the unpaid portion of leave.

C. Determining the 12-Week FMLA Period

For purposes of determining the amount of leave used by an eligible employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. For example, if an employee is on FMLA leave during the week in which the Martin Luther King holiday falls, the employee's leave time is not extended by one day. If the school system temporarily closes for one or more weeks, the days the school system's activities have ceased do not count against the employee's FMLA leave entitlement.

IV. Leave Conditions

A. Expiration of Entitlement

1. The entitlement to leave for a birth, adoption, or foster care placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth, adoption, or foster care placement.
2. When an employee provides affirmative notice of their desire not to return from Family Medical Leave Act (FMLA) leave, the obligation of job reinstatement and the continuation of benefits cease, as FMLA ends.
3. If certification is not received within the appropriate timeframe, FMLA coverage may be delayed, denied or cease.

B. Leave Taken Intermittently or on a Reduced Leave Schedule

1. Leave associated with bonding for the birth or placement of a child within the first year, can be taken by an employee intermittently; not on a reduced leave schedule. If requesting intermittent leave, the minimum duration of such leave periods is 11 consecutive work days.

2. The Family and Medical Leave law provides that for intermittent leave or leave on a reduced leave schedule, there must be a medical need for leave (as distinguished from voluntary treatments and procedures) and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. Employees needing intermittent Family and Medical Leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the employer's operations. In addition, an employer may assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule.
3. The Family and Medical Leave law provides that if an employee requests intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment, including during a period of recovery from a serious health condition, the employer may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. An alternative position for these purposes does not have to have equivalent duties. The employer may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary.
4. If a teacher is scheduled to be absent for more than 20% of the working days during a period of planned medical leave that is foreseeable and planned to care for themselves or a qualified family member, the employer may require the employee to choose:
 - a. To take leave for a specified period that does not exceed the length of planned leave; or
 - b. Be temporarily transferred to another qualified position that has equivalent pay and benefits. This may be necessary when the other position can better accommodate the need for such planned absences.

C. Scheduling Requirement

The Family and Medical Leave law provides that when planning medical treatment, the employee should consult with the employer and make a reasonable effort to schedule the leave so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider for the employee or the health care provider of the qualified family member. Employees are ordinarily expected to consult with their employers prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employer and the employee. In any event, when notice is given of the need for leave, an employer may, for justifiable cause, require an employee to attempt to reschedule treatment, subject to the ability of the health care provider to reschedule the treatment and the approval of the health care provider as to any modification of the treatment schedule.

D. Classification of Leave

Family Medical Leave is unpaid leave that may consist of paid time off, dependent upon leave available to the employee. All accrued paid leave shall be applied to the employee's absences before unpaid leave begins.

1. Unpaid Leave

If paid leave is available for fewer than 12 workweeks, the additional weeks of leave necessary to attain the 12 workweeks of leave required will be without compensation.

2. Paid Leave

- a. An eligible employee shall use all accrued annual, sick and personal leave for FMLA leave. The employee may also use other sources of leave available through opportunities described in the negotiated agreements. Paid leave runs concurrently with the FMLA leave period.
- b. An employee's FMLA 12-week leave entitlement may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition. The employee's leave will be paid under approved workers' compensation benefits and the salary of the employee will be adjusted so that the total of the workers' compensation (excluding medical expenses) and salary from the board will not exceed the employee's regular salary.

3. Designation of Leave - Family and Medical

- a. An employee absent from work for a period of more than three consecutive days or any other period of leave that is associated with a serious health condition, may submit information to determine that such leave will be designated as Family and Medical Leave. Employees absent for more than ten consecutive days are required to submit information to determine Family Medical Leave designation. Additionally, employees who are absent on an intermittent basis for a serious health condition, may be asked to submit information to determine that such leave is designated as Family and Medical Leave.
- b. The Benefits Personnel Officer is responsible for designating leave as Family and Medical Leave when adequate information is provided. When information is provided, if the Benefits Personnel Officer does not have sufficient information about the reason for the employee's use of leave, they should share with the employee that further information will be required for the designation of FMLA.

- c. The school system may ask an employee requesting leave to explain the reasons for the leave so that the school system can determine if the leave qualifies as Family and Medical Leave.
- d. If the employee was absent for an FMLA reason and the supervisor did not learn the reason for the absence until the employee's return, the school system may, upon the employee's return to work, promptly (within two business days of the employee's return to work) designate the leave retroactively with appropriate notice to the employee.
- e. Employees are required to comply with FCPS leave and absence reporting procedures upon request and during FMLA leave. Failure to comply with requests for documentation or proper notice of absences may result in disciplinary action and FMLA leave may be denied.

E. Spouses Employed by the Frederick County Public Schools System

If both parents eligible for leave are employed by the FCPS system, each parent may take 12 weeks of leave for the birth, adoption or foster care placement of a child. In cases where one parent exhausts leave, the other may donate sick leave by completing the Bonding Leave Donation Form.

V. Notification Requirements

Notification of Leave Request

1. An employee must provide the FCPS system at least 30 days' advance notice before Family and Medical Leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or of a family member. If 30 days' notice is not practicable because of a change in circumstances or medical emergency, notice must be given as soon as an employee has knowledge of the need for leave.
2. To submit a request for FMLA review, employees will use the following process:
 - a. For foreseeable leave, submit a Leave Request to the Benefits Personnel Officer. An appropriate Leave Request is a copy of a Leave Request Form with FMLA selected, or the completion of the Projected Leave Request Form.

- b. For leave that is unforeseeable, provide enough notice of a potential serious health condition to the immediate supervisor that leave may qualify as a serious health condition. This should occur as soon as employee has knowledge of the need for leave.
 - c. It is the responsibility of the employee to request leave under the FMLA by completing the appropriate requests and/or by giving proper notice of such leave.
 - d. Requests for leave under FMLA shall be followed up by medical certification.
3. After the designation of FMLA, any absences taken that are related to the original FMLA occurrence, must be clearly stated as being related. This is noted on the Leave Request Form by selecting the FMLA box or by specifically communicating this relationship to the supervisor when circumstances prevent a Leave Request Form from being completed. Forward copies of Leave Requests Forms for related absences to the Benefits Personnel Officer.

VI. Certification Requirements

- A. The FCPS system requires that a request for family or employee serious health leave be supported by a medical certification statement issued by the health care provider of the eligible employee or qualified family member. The employee shall provide, within 15 calendar days of request, a copy of such certification to the Benefits Office.
- B. Sufficient certification shall include:
 1. The date on which the serious health condition commenced;
 2. The probable duration of the condition;
 3. The appropriate medical facts within the knowledge of the health care provider regarding the condition;
 4. A statement that the employee is unable to perform the functions of the position of the employee; or
 5. A statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent;
 6. In the case of certification for intermittent leave, leave on a reduced leave schedule, or for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;

7. In the case of certification for intermittent leave, or leave on a reduced leave schedule, a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and
8. In the case of certification for intermittent leave, or leave on a reduced leave schedule, a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the son, daughter, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.
9. The Certification of Health Care form is available on the Benefits Office website, in the FCPS Employee Benefits Office, or by calling 301-644-5092. Employees may also request a certification from school personnel at their location. The medical certification must be submitted to the Benefits Personnel Officer within 15 calendar days of request. Failure to submit the certification can result in the denial of the request for Family and Medical Leave.
10. If requesting FMLA as associated with birth, adoption or the placement of a foster child, the employee will provide verification of birth, adoption or placement.

C. Second Opinion

In any case in which the FCPS system has reason to doubt the validity of the certification provided for leave, the FCPS system may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified for such leave.

D. Third Opinion

If the opinions of the employee's and the employer's designated health care providers differ, the employer may require the employee to obtain certification from a third health care provider, at the employer's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the employer and the employee. The employer and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employer does not attempt in good faith to reach agreement, the employer will be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification.

VII. Recertification

A. Issuance

If an employee is unable to return to work because of the continuation, reoccurrence, or onset of the serious health condition, such claim must be supported by:

1. A certificate issued by the health care provider of the son, daughter, spouse, or parent of the employee in the case of an employee unable to return to work because of the condition specified; or
2. A certification issued by the health care provider of the eligible employee, in the case of an employee unable to return to work.

B. Submission

The employee shall provide, within 15 calendar days of request, a copy of such certification to the FCPS system.

C. Sufficiency of Certification

1. Leave due to serious health condition of an employee: The certification shall be sufficient if it states that a serious health condition prevented the employee from performing his/her job on the date that the leave expired.
2. Leave due to serious health condition of family member: The certification described shall be sufficient if it states that the employee is needed to care for the qualified family member who has a serious health condition on the date that the leave expired.

VIII. Employment and Benefits Protection

A. Restoration to Position

1. An employee eligible for Family and Medical Leave (with the exception of employees designated as "key employees") will be restored to his or her old position or to a position with equivalent pay, benefits, and other terms and conditions of employment (See Section VIII B). An attempt will be made to restore an employee returning from Family and Medical Leave to his or her original position. If an employee's original position is unavailable, the employee will be placed in an "equivalent position", determined by the Human Resources Department. The law provides, however, that an employee has no right to return to the same position.
2. Loss of benefits - The taking of leave shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

3. Nothing shall be construed to entitle any restored employee to 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, except the accrual of any seniority or leave during any period of unpaid leave.
4. Certification - As a condition of restoration for an employee who has taken leave for medical purposes, or is returning to work from childbirth, the FCPS system requires each such employee to receive certification from the health care provider that the employee is able to resume work.

B. Exemption Concerning Certain Highly Compensated Employees – Key Employees

1. Denial of restoration – The FCPS system may deny restoration to any eligible employee designated as a Key Employee if:
 - a. Such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;
 - b. The employer notifies the employee of the intent of the employer to deny restoration on such basis at which time the employer determines that such injury would occur; and
 - c. In any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.
2. Affected employees – A salaried, eligible employee who is among the highest paid 10% of the employees of the school system.
3. Although an affected employee may be denied restoration, the employee is still entitled to leave.

C. Maintenance of Health Benefits

1. Coverage – The FCPS system shall maintain health and dental coverage under any "group health plan" 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. If the employee is paid during this time period, premium contributions will be made on a payroll deduction basis. If the employee is unpaid, any required premium contributions may be billed to the employee. Checks are payable to FCPS and should be sent to the Benefits Office, Central Office Building, 191 S. East Street, Frederick, MD 21701.
2. Failure to return from leave – The FCPS system may recover the premium that the employer paid for maintaining coverage for the employee, and, if applicable, for the employee's dependents under such group health plan during any period of unpaid leave if the employee fails to return to work for a reason other than:

- a. The continuation, recurrence, or onset of a serious health condition that entitles the employee to leave; or
 - b. Other circumstances beyond the control of the employee.
3. In order to maintain dependent coverage, payment must be made to the benefits office by the employee within the designated time. The FCPS system will provide the employee with advance written notice of terms and conditions under which these payments must be made.
 4. Failure to make required premium payments - The FCPS system may drop the coverage for an employee whose premium payment is more than 30 days late. Employees will be notified 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date.

D. Experience Credit

Employees on unpaid leave in excess of 12 weeks will not automatically receive experience credit.

IX. School System Special Conditions

In order to minimize disruption near the end of a semester, teachers may be required to return to a position as follows:

- A. If a teacher begins any category of Family and Medical Leave five or more weeks prior to the end of the semester, and the period of leave is for more than three weeks, then FCPS can require a teacher seeking to return within the last three weeks to wait until the next semester.
- B. If the teacher begins any category of Family and Medical Leave (except for employee's serious health condition) less than five weeks before the end of the semester and the period of leave is greater than two weeks, then FCPS can require a teacher seeking to return within the last two weeks to wait until the next semester.
- C. If the teacher begins any category of Family and Medical Leave (except for employee's serious health condition) three or fewer weeks before the end of the semester and the period of leave is greater than five working days, FCPS may require the teacher seeking to return to wait until the next semester.
- D. The two academic terms occurring during the year are designated as a semester.

X. Record Keeping

- A. The FCPS system Benefits Personnel Officer will manage the Family and Medical Leave record keeping system, and notify the employee of approval of Family and Medical Leave or any issues thereof.

- B. Principals, supervisors, work site managers or designated employees are responsible for the proper coding of all annual, personal, and/or sick leave during Family and Medical Leave.

Approved:

Original signed by

Cheryl L. Dyson
Superintendent

EXHIBIT 1

EMPLOYEES MUST HAVE WORKED AT LEAST THE NUMBER OF HOURS BELOW IN THE 12 MONTHS IMMEDIATELY PRECEDING THE LEAVE IN ORDER TO QUALIFY FOR FMLA UNDER FREDERICK COUNTY PUBLIC SCHOOLS' POLICY.

SCHEDULE	MINIMUM HOURS
180 DAY 7 HOUR	630
180 DAY 8 HOUR	720
182 DAY 7 HOUR	637
182 DAY 8 HOUR	728
183 DAY 7 HOUR	640.5
188 DAY 7 HOUR	658
188 DAY 8 HOUR	752
189 DAY 7 HOUR	661.5
190 DAY 7 HOUR	665
195 DAY 8 HOUR	780
208 DAY 7 HOUR	728
243 DAY 7 HOUR	850.5
243 DAY 8 HOUR	972
244 DAY 7 HOUR	854
260 DAY 7 HOUR	910
260 DAY 8 HOUR	1040