

MIDDLETOWN AREA SCHOOL DISTRICT

SECTION: PROFESSIONAL EMPLOYEES
 TITLE: FAMILY AND MEDICAL LEAVE
 ADOPTED: November 15, 1993
 REVISED: August 24, 2009

435. FAMILY AND MEDICAL LEAVE	
1. Purpose	<p>This policy specifies the manner in which family and medical leaves will be provided to professional employees pursuant to the Family and Medical Leave Act of 1993, as amended by Section 585(a) of the National Defense Authorization Act.</p>
2. Delegation of Responsibility 29 U.S.C. Sec. 2601 et seq 29 CFR Part 825	<p>The School Board reserves the right to specify the conditions under which family and medical leaves may be taken under this policy consistent with the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. § 2601 et seq., its implementing regulations, 29 CFR Part 825, and consistent with the School Laws of Pennsylvania.</p> <p>All words, phrases, terms and conditions of this policy shall be construed and interpreted pursuant to the provisions of the FMLA and its regulations. Furthermore, all the provisions of the FMLA are specifically incorporated into this policy. The district reserves the right to impose any conditions or limitations upon any leave of absence as may be deemed consistent with the provisions of the FMLA.</p>
3. Guidelines 29 U.S.C. Sec. 2612	<p><u>Reasons For Leave</u></p> <p>Employees who have been employed by the district for at least twelve (12) months and who have completed at least 1,250 hours of service during the twelve-month period immediately preceding the commencement of the leave may be eligible for unpaid leave pursuant to this policy. Eligible employees are entitled to a total of up to twelve (12) workweeks (twenty-six (26) weeks in the case of covered servicemember leave) of unpaid leave during any twelve-month period in the following situations:</p> <ol style="list-style-type: none"> 1. <i>FAMILY LEAVE</i> – A child is born, adopted or taken into the employee's immediate family for foster care and leave is needed for the employee to care for the child. 2. <i>PERSONAL MEDICAL LEAVE</i> – The employee becomes unable to perform his/her job functions due to a serious health condition. 3. <i>MEDICAL LEAVE FOR FAMILY CARE</i> – The employee is needed to care for a spouse, child or parent of the employee who has a serious health condition.

<p>29 U.S.C. Sec. 825.201</p> <p>29 CFR Sec. 825.200</p>	<p>4. <i>COVERED SERVICEMEMBER LEAVE</i> – An eligible employee who is the spouse, son, daughter, parent or next of kin of a covered servicemember, is needed to care for the covered servicemember who has sustained a serious illness or injury. Unlike other types of FMLA leave, eligible employees are permitted to take up to twenty-six (26) weeks of covered servicemember leave. Such leave may only be taken during a single twelve-month period; it does not renew with each leave year. In addition, this twenty-six (26) week allotment is reduced by any other types of FMLA leave taken during the twelve-month period.</p> <p>5. <i>QUALIFYING EXIGENCY LEAVE</i> – The eligible employee needs to attend to a qualifying exigency (as defined in federal regulations) due to a family member on active duty in the military who is called upon to support a contingency operation.</p> <p>In cases where the district employs both spouses, Family Leave or Medical Leave for Family Care may be limited to a combined total of twelve (12) weeks between them (or twenty-six (26) weeks in the case of covered servicemember leave).</p> <p><u>Leave Year</u></p> <p>For purposes of FMLA leave, the district shall compute the twelve (12) month “leave year” to be a rolling twelve-month period measured backward from the date leave is first used.</p> <p><u>Substitution Of Paid Leave</u></p> <p>It is the policy of Middletown Area School District that FMLA will run concurrently with paid sick leave. Middletown Area School District requires a professional employee to substitute accrued sick leave for an otherwise unpaid FMLA leave. The professional employee will not be required to exhaust his/her accrued personal leave.</p> <p><u>Job Security And Benefits</u></p> <p><i>Job security</i> - Each professional employee returning from FMLA leave will be restored to the same position held when the leave started, or to an equivalent position with the same benefits, same pay and the same terms and conditions of employment.</p> <p><i>Insurance benefits</i> - Group health care plan coverage for professional employees will be maintained by the district during a maximum period of twelve (12) weeks of leave at the same level and conditions of coverage that would have been provided to the employee had the employee not taken the leave. If further leave beyond the twelve-week period is required for an employee, the employee will be responsible for the cost of maintaining group health care plan coverage, unless waived at the discretion of the School Board.</p>
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Failure to return to work - If a professional employee fails to return to work with the district after an FMLA leave has expired, the employee must reimburse all health care plan insurance premiums, or its equivalent for self-insured plans, paid by district for the employee during the leave, unless the failure to return to work is caused by the continuance, recurrence or onset of the employee's serious health condition for which FMLA leave was granted.

Intermittent Or Reduced Leave Schedule

Personal Medical Leave or Medical Leave for Family Care may be taken intermittently (Intermittent Leave) or on a Reduced Leave Schedule, if medically necessary.

The district does not grant intermittent or reduced schedule Family Leave.

If a professional employee requests Intermittent Leave or a Reduced Leave Schedule, the professional employee may, at the district's option, be temporarily transferred to another job which better accommodates the employee's need for intermittent periods of leave and the district's operational needs. Transferring to an alternative position may include temporarily altering an existing job to better accommodate the employee's need for intermittent or reduced leave.

When a professional employee takes Intermittent Leave or a Reduced Leave Schedule, the district will deduct from the employee's salary for any hours taken as intermittent or reduced leave within a workweek.

Scheduling Of Leave

The regular school year is divided into two (2) semesters. The phrase **academic term** or **term** is to be interpreted as a school semester.

Scheduling of leave with notice –

If an eligible employee who is employed principally in an instructional capacity requests Intermittent Leave or a Reduced Leave Schedule for Personal Medical Leave or Medical Leave for Family Care, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than twenty percent (20%) of the total number of working days over the period the leave would extend, the district may, as its operational needs dictate, require the employee to either:

1. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment.

2. Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

If an eligible employee who is not employed principally in an instructional capacity and requests Intermittent Leave or a Reduced Leave Schedule for Personal Medical Leave or Medical Leave for Family Care that is foreseeable based on planned treatment that is medically necessary, the district may require that the employee transfer temporarily to an available alternative position (for which such employee is qualified) offered by the district if the alternative position:

1. Has equivalent pay and benefits.
2. Better accommodates recurring periods of leave than the regular employment position.

Scheduling of leave without notice –

If an eligible employee does not give required notice of the need for foreseeable Intermittent Leave or a Reduced Leave Schedule, the district may require, as its option, that the employee take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the district may, at its option, require the employee to delay the taking of leave until the notice requirement under the FMLA and its implementing regulations is met.

The following rules shall apply with respect to periods of FMLA leave taken near the conclusion of an academic term by an eligible employee employed principally in an instructional capacity:

1. *Leave more than five (5) weeks prior to end of term* - If the eligible employee begins the FMLA leave more than five (5) weeks prior to the end of the academic term, the district may require, at its option, the employee to continue taking leave until the end of the academic term, if:
 - a. The leave is of at least three (3) weeks duration.
 - b. The return to employment would occur during the three-week period before the end of such academic term.

2. *Leave less than five (5) weeks prior to end of term* - If the eligible employee takes leave for a purpose other than Personal Medical Leave, and the leave begins during the period that commences five (5) weeks prior to end of the academic term, the district may require, at its option, the employee to continue taking leave until the end of such term, if:
 - a. The leave is greater than two (2) weeks duration.
 - b. The return to employment would occur during the two-week period before the end of such term.
3. *Leave less than three (3) weeks prior to end of term* - If the eligible employee begins leave for a purpose other than Personal Medical Leave, and the leave begins during the period that commences three (3) weeks prior to the end of the academic term and the duration of the leave is greater than five (5) working days, the district may require, at its option, the employee to continue to take the leave until the end of such academic term.

Employee Obligations

Advanced notice of leave - When the need for FMLA leave is foreseeable, the employee must provide at least thirty (30) days written notice to the district. If thirty (30) days notice is not possible under the circumstances, the employee must give as much written notice as is practicable.

Scheduling of medical services - With respect to foreseeable medical treatments, the employee must make reasonable efforts to schedule the treatment so as to not unduly disrupt the district's educational program. If medically possible, the employee should schedule foreseeable non-emergency medical treatments during normal school vacation times.

Medical certification required - Employees are required to submit three (3) types of medical certifications to the district in connection with a FMLA request. The three (3) types of medical certifications are:

1. *Medical certification to take leave* - An employee desiring a FMLA leave for the previously stated purposes shall provide timely certification from the health care provider (as defined by the Family Medical Leave Act and its regulations) as to: the date that the condition commenced; duration; necessity for the employee's leave; and the employee's inability to perform his/her job functions.

2. *Medical certification to continue the leave* - The employee shall provide certification from the health care provider (as defined by the Act and its regulations) that the serious medical condition of the employee or family member continues to prevent the employee from returning to work. Such certification shall be submitted on a three-week periodic basis during the time of the FMLA leave.
3. *Medical certification that the employee is able or unable to return from the leave (e.g. a "fitness-for-duty" report)* - Each employee seeking restoration of his/her job after an FMLA leave because of the employee's own serious health condition shall provide a medical certification from the health care provider (as defined by the Act and its regulations) that the employee is able to resume work. If the employee is unable to return to work at the expiration of the FMLA leave, a medical certification to that effect shall be provided to district.

Second medical opinion - The district will only accept medical certifications from health care providers of the types specified in the FMLA regulations. If the district doubts the validity of the treating health care provider's medical certification, the district may make a written demand for a second opinion. The district shall select and pay for such an independent medical examination to be conducted by a physician of its choice, other than the district's own doctor. If the health care provider's opinion and that of the aforementioned independent medical examiner differ, the district and the employee shall select and the district shall pay for another independent medical examination of the employee. This third opinion shall be final and binding upon both the district and the employee.

Military Family Leave certification required - Employees requesting leave due to a "qualifying exigency" must provide proof of the qualifying family member's call-up for active military service before leave is granted. Employees requesting military caregiver leave must provide certification of the family member or next-of-kin's injury, recovery, or need for care.

Certification form - The district chooses to use Optional Form WH-380 set forth in the United States Department of Labor's Regulations for FMLA (29 CFR Part 825 - Appendix B). When being utilized for a FMLA leave for the employee's own serious health condition, a copy of the most recent job description for the employee's position may also be sent with the certification form to the physician or practitioner.

To the extent an employee is substituting paid leave for FMLA leave, the lesser notice and medical certification requirements of the paid leave will apply. The above FMLA notice and medical certification requirement are applicable only to that portion of the leave covered only by FMLA (unpaid).

<p>4. Definitions</p>	<p><u>Nondiscrimination Policy And Posting</u></p> <p>The policy of the School Board prohibits discrimination against any employee, or applicant for employment, on the basis of the employee or applicant exercising his/her rights under the Family and Medical Leave Act. No one employed by the district shall interfere with any employee's attempt to exercise Family and Medical Leave Act guaranteed rights. Any person engaging in such discrimination shall be subject to sanctions, including, but not limited to, warning or reprimand, suspension, or termination, subject to applicable procedural requirements.</p> <p>The district shall post written notice to its employees of their rights under FMLA in a form set forth under FMLA regulations - See Exhibits A and B to this policy.</p> <p>Covered Servicemember – A member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness (i.e., an injury or illness incurred by the servicemember in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating).</p> <p>Eligible employee – An employee who has been employed:</p> <ol style="list-style-type: none">1. For at least twelve (12) months by the school district before the leave is Requested.2. For at least 1,250 hours of actual service by the school district during the twelve-month period immediately before the leave starts. <p>Health care provider –</p> <ol style="list-style-type: none">1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or2. Any other person determined by the Secretary of the United States Department of Labor to be capable of providing health care services. <p>Intermittent Leave – means a series of nonconsecutive leave periods on an as-needed basis.</p> <p>Parent – The biological parent or an individual who stands in loco parentis.</p>
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Reduced Leave Schedule – is a pre-determined reduction of the usual number of hours worked by the employee during the regular workweek, or hours per workday.

Serious health condition – An illness, injury, impairment, or physical or mental condition that involves:

1. Inpatient care in a hospital, hospice, or residential medical care facility; or
2. Continuing treatment by a health care provider, which is defined to include:
 - a. A period of incapacity requiring absence from work, school, or other regular activity for more than three (3) calendar days and any subsequent treatment or period of capacity relating to the same condition.
 - b. Any period of incapacity or treatment for such incapacity due to a chronic, serious health conditions.
 - c. Any period of incapacity due to pregnancy or for prenatal care.
 - d. Any period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective.
 - e. Any period of absence to receive multiple treatments by a health care provider either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three (3) consecutive calendar days in the absence of treatment.

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:

1. Under eighteen (18) years of age; or
2. Eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.

Spouse – A husband or wife.

Twelve-month period – The “rolling” twelve-month period measured backward from the date an employee uses any leave pursuant to the FMLA or this policy.

References:

Family And Medical Leave Act – 29 U.S.C. Sec. 2601 et seq.

Family And Medical Leave, Title 29, Code of Federal Regulations – 29 CFR
Part 825

Board Policy – 813