

Cocke County Board of Education

Monitoring: Review: Annually, in February	Descriptor Term: Family and Medical Leave	Descriptor Code: 5.305	Issued Date: 12/10/15
		Rescinds: 5.305	Issued: 05/10/11

1 PURPOSE

2 To entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the
3 care of a child, spouse or parent who has a serious health condition.

4 ELIGIBILITY

5 Anyone who has been employed for at least twelve (12) months by the school system and anyone who has at least
6 1,250 hours of service (hours used for leave, even FMLA leave, shall not be credited for service for purposes of
7 FMLA eligibility¹) during the previous twelve-month period.²

8 GENERAL PRINCIPLES

- 9 1. Any employee shall be granted, upon request, up to twelve (12) weeks unpaid leave for the birth or
10 adoption of a child, the care of a child, spouse, or parent who has a serious health condition or for
11 qualifying exigencies arising out of the fact that the employee's spouse, child, or parent is on active duty,
12 or has been notified of an impending call or order to active duty, in support of a contingency operation.
- 13 2. Any employee on maternity leave shall be permitted to use accumulated sick leave during the period of
14 actual physical disability only. Otherwise, the maternity leave shall be unpaid leave. A teacher may use
15 up to thirty (30) days of accumulated sick leave for the adoption of a child. If both adoptive parents are
16 teachers, only one parent may request leave. Written verification from the adoption agency or other entity
17 handling the adoption shall be required before the leave is granted.⁴
- 18 3. A physician's statement may be required by the director of schools when determining the period of actual
19 physical disability.⁵
- 20 4. Request for leaves and extension of leaves shall conform to state law governing all leaves of absence.

21 QUALIFYING EXIGENCIES

22 Qualifying exigencies include:

23 Issues arising from a covered service member's short notice deployment (i.e., less days of notice) for a
24 period of seven days from the date of notification;

25 Military events and related activities, such as official ceremonies, programs, or events sponsored by the
26 military or family support or assistance programs and informational briefings sponsored or promoted by
27 the military, military service organizations, or the American Red Cross that are related to the active duty
28 or call to active duty status of a covered service member;

29 Making or updating financial and legal arrangements to address a covered service member's absence;

1 Attending counseling provided by someone other than a health care provider for oneself, the covered
2 service member, or the child of the covered service member, the need for which arises from the active
3 duty or call to active duty status of the covered service member;

4 Taking up to 15 days of leave to spend time with a covered service member who is on short-term
5 temporary, rest and recuperation leave during deployment;

6 Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration
7 briefings and events, and other official ceremonies or programs sponsored by the military for a period of
8 90 days following the termination of the covered service member's active duty status, and addressing
9 issues arising from the death of a covered service member;

10 Any other event that the employee and employer agree is a qualifying exigency.

11 **MILITARY CAREGIVER LEAVE** ⁸

12 An eligible employee who is a spouse, child, parent, or next of kin of a covered service member or covered veteran
13 with a serious injury or illness shall be granted up to a total of 26 workweeks of unpaid leave during a “single 12-
14 month period” to care for the covered service member or covered veteran. A covered service member is a current
15 member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical
16 treatment, recuperation, or therapy, is otherwise in out-patient status, or is otherwise on the temporary disability
17 retired list, for a serious injury or illness. A covered veteran is an individual who was a member of the Armed
18 Forces at any time during the period of 5 years preceding the date of the medical treatment, recuperation, or
19 therapy that has a serious injury or illness who is currently receiving medical treatment, recuperation, or therapy.
20 The calculation of this 5-year period shall not include the interval of October 28, 2009 through March 8, 2013.

21 For covered service members, a serious injury or illness is one that was incurred by a service member in the line
22 of duty on active duty that may render the service member medically unfit to perform the duties of his or her
23 office, grade, rank, or rating. For covered veterans, a serious injury or illness is defined as:

- 24 i. A continuation of a serious injury or illness that was incurred or aggravated in the line of duty
25 while on active duty that rendered the veteran unable to perform the duties of the veteran's office,
26 grade, rank, or rating;
- 27 ii. A physical or mental condition for which the veteran has received a U.S. Department of
28 Veterans Affairs Service Related Disability Rating (VASRD) of 50 percent or higher and such
29 VASRD rating is based, in whole or in part, on the condition precipitating the need for military
30 caregiver leave;
- 31 iii. a physical or mental condition that substantially impairs the veteran's ability to secure or follow a
32 substantially gainful occupation by reason of a disability or disabilities related to military service, or
33 would do so absent treatment; or
- 34 iv. an injury, including a psychological injury, on the basis of which the veteran has been enrolled
35 in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

36 The “single 12-month period” for leave to care for a covered service member or covered veteran with a serious
37 injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless
38 of the 12-month period established by the employer for other types of FMLA leave. An eligible employee is
39 limited to a combined total of 26 workweeks of leave to provide care for a covered service member. ⁹ The
40 maximum of 26 workweeks may include no more than 12 workweeks of leave that is taken for the birth and care

1 of a newborn child, for placement of a child for adoption or foster care, for care of a parent who has a serious
2 health condition, or for the employee's own serious health condition.⁹

3 RESTRICTIONS

4 1. For foreseeable leave, the employee shall provide the director of schools with at least thirty (30) days
5 written notice before the beginning of the anticipated leave.

6 2. The director may require that a request for leave be supported by certification issued by a health care
7 provider with the following information:

8 a. the date on which the serious health condition commenced;

9 b. the probable duration of the condition;

10 c. the appropriate medical facts within the knowledge of the health care provider regarding the
11 condition; and

12 d. a statement that the eligible employee is needed to care for the son, daughter, spouse or parent
13 and an estimate of the amount of time that such employee is needed.

14 3. If there is any reason to doubt the validity of the certification provided, the director may require, at the
15 expense of the school system, an opinion of a second health care provider.

16 4. Once it has been established that the leave requested qualifies for FMLA, the director of schools/
17 designee shall notify the employee within two (2) business days (absent extenuating circumstances) that
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20 Any leave taken pursuant to state leave statutes (paid vacation leave, personal leave, sick leave or
21 worker's compensation) shall run concurrently with FMLA leave.⁶

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23 The notice may be given orally or in writing. If the notice is oral, it shall be confirmed in writing, no
24 later than the following pay day.⁷

25 5. Intermittent Leave - When a licensed employee requests foreseeable leave for planned medi- cal treatment
26 and the employee would be on leave for greater than 20% of the total number of working days in the
27 period during which the leave would extend, the school may require that such employee elect either to
28 take the leave for periods of a particular duration, not to exceed the duration of the planned medical
29 treatment or to transfer temporarily to an available alternative position offered by the school system for
30 which the employee is qualified, and that has equivalent pay and benefits and better accommodates
31 recurring periods of leave.

32 6. Period Near the End of an Academic Term (Professional employees) - If leave is taken more than five (5)
33 weeks prior to the end of the term, the director of schools may require the employee to continue taking
34 leave until the end of the term if the leave is at least three (3) weeks of duration and the return of
35 employment would occur during the three (3) week period before the end of the term.

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37 If the leave is taken five (5) weeks prior to the end of the term, the director of schools may require the
38 employee to continue taking leave until the end of the term if the leave is greater than two (2) weeks
39 duration and the return to employment would occur during the two (2) week period before the end of the
40 term.

- 1 7. Any employee eligible under state law who requests leave due to pregnancy, childbirth, or adoption shall
 2 be granted up to four (4) months leave.³ FMLA leave for birth and care of a newborn child or for placement
 3 of a child for adoption or foster care, shall run concurrently with the state leave.³
- 4 8. Spouses who are both eligible employees of the school district are limited to a combined total of 12
 5 workweeks of FMLA leave in a single 12-month period if the leave is taken for birth and care of a newborn
 6 child, for placement of a child for adoption or foster care, or to care for a parent who has a serious health
 7 condition.⁸ Under certain circumstances, spouses who share such leave may be eligible for limited
 8 amounts of additional leave for other qualifying FMLA reasons.^{8,9}

9 **REQUIREMENTS OF THE BOARD**

- 10 1. The employee shall be restored to the same position of employment or an equivalent position with no
 11 loss of benefits, pay or other terms of employment.
- 12 2. The employee shall be kept under any group health plan for the duration of the leave.
- 13 3. The Board may recover the premium paid under the following conditions:
 14 a. the employee fails to return from leave after the period of leave has expired.
 15 b. the employee fails to return to work for a reason other than the continuation, recurrence, or
 16 onset of a serious health condition or other circumstances beyond the control of the employee.

Legal References

1. *Hinson v. Tecumseh Products Co.*, 2000 U.S. App. LEXIS 26778, at *1—10 (6th Cir. Oct. 17, 2000)
2. Federal Family and Medical Leave Act 1993, 29 USCS § 2601, 2611—2619
3. TCA 49-5-702; TCA 4-21-408
4. TCA 49-5-710
5. TCA 49-5-710(a)(2)
6. 29 CFR § 825.207
7. OP Tenn. Atty Gen 94-006 (Jan 13, 1994); *Plant v. Morton International, Inc.*, 212 F. 3d 929, 932 (6th Cir. 2000)
8. 29 CFR § 825.127
9. 29 CFR § 825.120

Cross References

- Sick Leave 5.302
 Long Term Leaves 5.304