

Franklin Special Board of Education

Monitoring: Review: Annually, in January	Descriptor Term: Family and Medical Leave	Descriptor Code: 5.305	Issued Date: 03/13/17
		Rescinds: 5.305	Issued: 03/14/16

1 PURPOSE

2 To entitle employees to take reasonable leave for medical reasons, for the birth, adoption or foster care placement
3 of a child, and for the 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 leave under the Family & Medical Leave Act (FMLA), shall
7 not be credited for service for purposes of FMLA eligibility¹) during the previous twelve-month period.²

8 GENERAL PRINCIPLES

9 The FMLA provides that an eligible employee shall be granted, upon request, up to twelve (12) weeks unpaid
10 leave during a fixed calendar year for the following reasons:

- 11 1. The birth of a child;
- 12
- 13 2. The placement of a child with the employee for adoption or foster care;
- 14
- 15 3. A serious health condition of the employee that makes the employee unable to perform the essential
16 functions of his or her job position;
- 17
- 18 4. The care of a spouse, child, parent, or next of kin of the employee who has a serious health condition; or
- 19
- 20 5. Any qualifying circumstances arising out of the fact that a spouse, child, or parent of the employee is on
21 covered active duty, or has been notified of an impending call or order to covered active duty, in the
22 Armed Forces.

23 Granting of leave under this policy shall be subject to, and in accordance with, the provisions of applicable federal
24 and state laws. An employee may substitute accrued paid leave for unpaid time. Use of accrued paid leave shall
25 run concurrently with and be counted toward the employee's total period of FMLA leave.

26 MATERNITY/PATERNITY LEAVE

- 27 1. *Relationship between FMLA leave and Tennessee Maternity Act leave* - FMLA leave shall run
28 concurrently with leave provided under the Tennessee Maternity Act, which affords eligible employees
29 leave for a period not to exceed four (4) months for the adoption, pregnancy, childbirth and nursing of a
30 newborn child.³
- 31
- 32 2. *Sick Leave* - In accordance with state law and district policy, upon written request of the eligible employee
33 accompanied by a statement from the employee's physician verifying pregnancy, any employee who goes
34 on maternity leave shall be allowed to use all or a portion of the employee's accumulated sick leave for

1 maternity leave purposes during the period of the employee's physical disability only, as determined by a
2 physician. Upon verification by a written statement from an adoption agency or other entity handling an
3 adoption or placement of a foster child, an eligible employee may also be allowed to use up to thirty (30)
4 days of accumulated sick leave for adoption or placement of a foster child. If both adoptive or both foster
5 parents are full-time employees of the district, however, only one (1) parent is entitled to use such leave.
6 ⁴ In the absence of available sick leave for this purpose, the leave shall remain unpaid.
7

8 Spouses who are both eligible employees of the school district are limited to a combined total of twelve
9 (12) workweeks of FMLA leave in a single twelve (12) month period if the leave is taken for birth and
10 care of a newborn child, for placement of a child for adoption or foster care, or to care for a parent who
11 has a serious health condition. Under certain circumstances, spouses who share leave for the birth or
12 adoption of a child may be eligible for limited amounts of additional leave for other qualifying FMLA
13 reasons.⁵

14 **LEAVE FOR A SERIOUS HEALTH CONDITION⁶**

15 Eligible employees, upon request, shall be granted up to twelve (12) weeks of unpaid leave when he/she is unable
16 to work because of a serious health condition or to care for an immediate family member with a serious health
17 condition. Granting of such leave shall be subject to the provisions of applicable federal and state laws. Employees
18 shall contact Human Resources to determine if the reason for leave qualifies as Family and Medical Leave. If the
19 leave is foreseeable, the employee shall give thirty (30) days' notice. If the leave is not foreseeable, the employee
20 shall notify Human Resources as soon as practicable - generally, either the same or next business day.

21 **LEAVE FOR MILITARY FAMILY MEMBERS**

- 22 1. *Qualifying Exigency Leave⁷* - Eligible employees are entitled to up to twelve (12) workweeks of leave
23 because of any "qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of
24 the employee, as defined under the FMLA, is on active duty, or has been notified of an impending call to
25 active duty, or has been notified of an impended call to active duty status, in the Armed Forces. Qualifying
26 exigencies may include:
27
- 28 a. Issues arising from the service member's short notice deployment (i.e., less days of notice) for a
29 period of seven days from the date of notification;
 - 30
 - 31 b. Military events and related activities (e.g. official ceremonies, programs, or events sponsored by
32 the military or family support or assistance programs and informational briefings sponsored or
33 promoted by the military, military service organizations, or the American Red Cross that are
34 related to the active duty or call to active duty status of a covered service member);
 - 35
 - 36 c. Making or updating financial and legal arrangements to address a covered service member's
37 absence;
 - 38
 - 39 d. Attending counseling provided by someone other than a health care provider for oneself, the
40 covered service member, or the child of the covered service member, the need for which arises
41 from the active duty or call to active duty status of the covered service member;
 - 42
 - 43 e. Taking up to fifteen (15) days leave to spend time with a covered service member who is on short-
44 term, temporary rest and recuperation leave during deployment;
 - 45
 - 46

- 1 f. Attending post-deployment activities, including attending arrival ceremonies, reintegration
2 briefings and events, and other official ceremonies or programs sponsored by the military for a
3 period of 90 days following the termination of the covered service member's active duty status,
4 and addressing issues arising from the death of a covered service member; or
5
6 g. Any other event that the employee and employer agree is a qualifying exigency.
7

- 8 2. *Military Caregiver Leave*⁸ - An eligible employee who is the spouse, son, daughter, parent, or next of kin
9 of a covered service member or covered veteran with a serious injury or illness is entitled to up to twenty-
10 six (26) workweeks of leave in a "single twelve (12) month period" to care for the covered service member
11 or covered veteran. A covered service member is a current member of the Armed Forces, including a
12 member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or
13 therapy, is otherwise in out-patient status, or is otherwise on the temporary disability retired list, for a
14 serious injury or illness. A covered veteran is an individual who was a member of the Armed Forces at
15 any time during the period of five (5) years preceding the date of the medical treatment, recuperation, or
16 therapy that has a serious injury or illness who is currently receiving medical treatment, recuperation, or
17 therapy. The calculation of this 5-year period shall not include the interval of October 28, 2009 through
18 March 8, 2013. The "single twelve (12) month period" for leave to military caregiver leave begins on the
19 first day the employee takes leave for this reason and ends twelve (12) months later. An eligible employee
20 is limited to a combined total of twenty-six (26) workweeks of leave to provide care for a covered service
21 member. The maximum of twenty-six (26) workweeks may include no more than twelve (12) workweeks
22 of leave that is taken for the birth and care of a newborn child, for placement of a child for adoption or
23 foster care, for care of a parent who has a serious health condition, or for the employee's own serious
24 health condition.

25 INTERMITTENT LEAVE⁹

26 Eligible employees may take FMLA leave intermittently when medically necessary to care for a seriously ill
27 family member, or because of the employee's own serious health condition, or for the care for a newborn, a newly
28 adopted child, or a newly placed foster care child. When a licensed employee requests foreseeable leave for
29 planned medical treatment and the employee would be on leave for greater than 20% of the total number of
30 working days in the period during which the leave would extend, the school may require that such employee elect
31 either to take the leave for periods of a particular duration, not to exceed the duration of the planned medical
32 treatment or to transfer temporarily to an available alternative position offered by the school system for which the
33 employee is qualified, and that has equivalent pay and benefits and better accommodates recurring periods of
34 leave.

35 RESTRICTIONS

36 1. Notice Requirements

- 37
38 a. *Employee Notice*¹⁰ - For foreseeable leave, the employee shall provide the director of schools with
39 at least thirty (30) days written notice before the beginning of the anticipated leave.
40
41 b. *District Notice* - Once it has been established that the leave requested qualifies for FMLA, the
42 director of schools/ designee shall notify the employee within three (3) business days (absent
43 extenuating circumstances) that any leave taken pursuant to state leave statutes (paid vacation
44 leave, personal leave, sick leave, or workers' compensation) shall run concurrently with FMLA
45 leave.¹¹ The notice may be given orally or in writing. If the notice is oral, it shall be confirmed in
46 writing, no later than the following pay day.¹²
47

1 2. Certification Requirement¹³
2

- 3 a. The director shall require that a request for leave be supported by certification issued by a health
4 care provider with the following information:
5 i. the date on which the serious health condition commenced;
6 ii. the probable duration of the condition;
7 iii. the appropriate medical facts within the knowledge of the health care provider
8 regarding the condition; and
9 iv. a statement that the eligible employee is needed to care for the son, daughter, spouse, or
10 parent and an estimate of the amount of time that such employee is needed.
11
- 12 b. If there is any reason to doubt the validity of the certification provided, the director may require,
13 at the expense of the school system, an opinion of a second health care provider.
14

15 3. Period Near the End of an Academic Term (Professional Employees)¹⁴
16

- 17 a. If leave is taken more than five (5) weeks prior to the end of the term, the director of schools may
18 require the employee to continue taking leave until the end of the term if the leave is at least three
19 (3) weeks of duration and the return of employment would occur during the three (3) week period
20 before the end of the term.
21
- 22 b. If the leave is taken five (5) weeks prior to the end of the term, the director of schools may require
23 the employee to continue taking leave until the end of the term if the leave is greater than two (2)
24 weeks duration and the return to employment would occur during the two (2) week period before
25 the end of the term.

26 **REQUIREMENTS OF THE BOARD**¹⁵

- 27 1. The employee shall be restored to the same position of employment or an equivalent position with no
28 loss of benefits, pay, or other terms of employment.
- 29 2. The employee shall be kept under any group health plan for the duration of the leave.
- 30 3. The board may recover the premium paid under the following conditions:
31
- 32 a. The employee fails to return from leave after the period of leave has expired; or
33
- 34 b. The employee fails to return to work for a reason other than the continuation, recurrence, or
35 onset of a serious health condition or other circumstances beyond the control of the employee.
36

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 U.S.C.A. § 2601, 2611—2619
3. TCA 49-5-702; TCA 4-21-408
4. TCA 49-5-710(a)(2)
5. 29 CFR § 825.120(a)(3)
6. 29 CFR § 825.113
7. 29 CFR § 825.126
8. 29 CFR § 825.124; 29 CFR § 825.127
9. 29 CFR § 825.202
10. 29 CFR § 825.302-825.304
11. 29 CFR § 825.207
12. OP Tenn. Atty Gen 94-006 (Jan 13, 1994); *Plant v. Morton International, Inc.*, 212 F. 3d 929, 932 (6th Cir. 2000)
13. 29 CFR § 825.305-825.313
14. 29 CFR § 825.602
15. 29 U.S.C.A. § 2614

Cross References

- Sick Leave 5.302
Long Term Leaves 5.304