

FAMILY AND MEDICAL LEAVE ACT REGULATION

In accordance with the Family and Medical Leave Act of 1993 (“FMLA”), the Bethlehem Central School District (the “District”) will grant to eligible employees up to twelve (12) weeks of unpaid leave during any twelve (12) month period for certain family and medical reasons (“Basic FMLA Leave”), and up to 26 weeks of unpaid leave in a single 12-month period to care for a military covered servicemember who has a serious injury or illness that incurred in the line of duty (“Military Caregiver FMLA Leave”). Any such leave shall be provided in accordance with FMLA, applicable District policies and collective bargaining agreements.

ELIGIBLE EMPLOYEES

In order to be eligible for leave under FMLA, a District employee must (a) have worked for the District for at least 12 months, (b) have worked at least 1,250 hours in the immediately preceding 12 months, and (c) be employed at a worksite where at least 50 employees are employed by the District within a 75 mile radius of that worksite.

In accordance with FMLA, a full-time classroom teacher is presumed to meet the 1,250 hour requirement, in the absence of evidence to the contrary. “Teacher” is defined by FMLA and includes an employee employed principally in an instructional capacity whose principal function is to teach and instruct students. The term “teacher” 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 non-instructional employees.

REASONS FOR LEAVE

Eligible employees must be taking Basic FMLA Leave for one of the following reasons:

- (a) For the birth of the employee’s child or to care for the child after birth (so long as such leave concludes within twelve (12) months from the date of the child’s birth) or for placement with the employee of a child for adoption or foster care (so long as such leave concludes within twelve (12) months from the date of the child’s placement);
- (b) To care for a spouse, partner, child or parent with a serious health condition;
- (c) For the serious health condition of the employee that makes the employee unable to perform the functions of his/her job; and
- (d) For specific qualifying exigencies arising when an employee’s spouse, child or parent is on covered active military duty, or is called to covered active military duty. “Qualifying exigencies” are defined by FMLA and include, by example, attending certain military events, arranging for alternative childcare, addressing certain legal and financial arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

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Eligible employees must be taking Military Caregiver FMLA Leave to care for a covered servicemember (as defined by FMLA) who is the employee's spouse, child, parent, or other next-of-kin, and who has a serious injury or illness.

A "serious health condition" is defined by the FMLA and includes an illness, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the function of the employee's job, or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

A "serious injury or illness," in the case a covered servicemember, is defined by FMLA and includes: (a) for a member of the Armed Forces, an injury or illness that incurred in the line of active duty (or existed before the beginning of the active duty and was aggravated by service in the line of active duty) and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating; and (b) for certain veterans who were members of the Armed Forces, a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in the line of active duty (or existed before the beginning of active duty and was aggravated by service in the line of active duty) and that manifested itself before or after the member became a veteran.

PERIOD OF LEAVE

An eligible employee is entitled to take up to a total of twelve (12) weeks of Basic FMLA Leave in a twelve (12)-month period. For purposes of calculating such twelve (12)-month period, the period is measured backwards from the date on which an employee uses any Basic FMLA Leave.

An eligible employee is entitled to take up to a total of twenty-six (26) weeks of Military Caregiver FMLA Leave during a "single twelve (12)-month period." The "single twelve (12)-month period" is measured forward from the date on which an employee first begins Military Caregiver FMLA Leave.

During each single 12-month period, an eligible employee is limited to a combined total of 26 weeks of Basic FMLA Leave and Military Caregiver FMLA Leave, of which no more than 12 weeks may be attributable to Basic FMLA Leave.

In certain instances, spouses who are both employed by the District may be entitled to only an aggregate total of 12 or 26 weeks of leave under this policy, as applicable.

PROCEDURE FOR REQUESTING LEAVE

When FMLA leave is foreseeable, then at least 30 days prior to the date when the leave is to begin, in accordance with procedures established by the District:

- Teachers and administrators wishing to take leave under FMLA shall notify the Superintendent of his/her request for such leave; and
- All other employees wishing to take leave under FMLA shall notify the Chief Business and Financial Officer of his/her request for such leave.

If such leave is not foreseeable, then notice shall be given as early as is practical.

Employees must provide sufficient information in order for the District to determine if the requested leave qualifies under FMLA, and the anticipated timing and duration of such leave. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

NOTIFICATION OF ELIGIBILITY & DESIGNATION OF FMLA LEAVE

Absent extenuating circumstances, the District will notify an employee in writing of his/her eligibility for leave under FMLA within five business days after the employee submits his/her request for leave, or after the District is otherwise aware of the employee's need for such leave. Such notice will specify any additional information required as well as the employee's rights and responsibilities while on such leave. If the District determines that an employee is not eligible for leave under FMLA, the District will notify the employee and provide a reason for the ineligibility.

The District also will inform an employee if his/her leave will be designated as leave under FMLA and the amount of leave counted against the employee's FMLA leave

entitlement. If the District determines that the requested leave is not FMLA leave, the District will notify the employee and provide a reason.

USE OF ACCRUED LEAVE TIME UNDER FMLA

Under the law, FMLA leave is unpaid. However, FMLA permits employees to choose, or employers to require employees, to use accrued paid leave while taking FMLA leave. Where an employee chooses, or the District requires an employee, to use accrued paid leave while taking leave under FMLA, such employee must comply with the terms of any applicable collective bargaining agreement or other applicable paid leave policy.

The District requires employees to use the following accrued paid time while taking unpaid FMLA leave:

Type of FMLA Leave	Type of Accrued Time Which Must Be Substituted
Basic FMLA Leave for an employee’s own serious health condition	Accrued vacation time, personal time, sick time and any other accrued paid leave
Basic FMLA Leave for the serious health condition of the employee’s spouse, child, or parent	Accrued vacation time, personal time, sick time and any other accrued paid leave
Military Caregiver FMLA Leave	Accrued vacation time, personal time and any other accrued paid leave
Any other kind of FMLA leave	Accrued vacation time, personal time and any other accrued paid leave

For employees taking an unpaid leave (pursuant to established District policies) that is also an FMLA-qualifying leave, the District will require such unpaid leave to run concurrently with the FMLA leave.

MAINTENANCE OF AND EFFECT ON BENEFITS

The District shall maintain group health insurance coverage for any employee on FMLA leave, whenever such insurance was provided before the leave was taken, on the same terms as if the employee had continued to work. Arrangements will be made for employees to pay their share of insurance premiums while on leave. The District may, as permitted by the FMLA, recover premiums paid by the District to maintain an employee’s insurance coverage if that employee fails to return to work from FMLA leave.

INTERMITTENT LEAVE

In certain circumstances, FMLA leave may be taken intermittently or on a reduced schedule basis, rather than in one block. Intermittent leave is leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee’s usual number of working hours per workweek, or hours per workday.

An eligible employee may use intermittent or reduced schedule leave:

- (a) Because of the employee’s own serious health condition, to care for a parent or child with a serious health condition, or for Military Caregiver FMLA Leave if there is a medical need for such leave and such medical need can be best accommodated through leave on an intermittent or reduced schedule basis; or

(b) For Basic FMLA Leave due to qualifying exigencies arising when an employee's spouse, child or parent is on covered active military duty, or is called to covered active military duty.

An eligible employee may take intermittent leave or reduced schedule leave after the birth or placement of a healthy child, only if the District agrees. Special rules apply if a teacher desires to take intermittent or reduced schedule leave.

Employees requesting intermittent or reduced schedule leave must attempt to schedule their leave so as not to disrupt the District's operations. The District may, in certain circumstances, assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule.

RETURN FROM LEAVE

Except as otherwise provided by FMLA, an employee who takes leave under FMLA will be able to return to the same job or a job with equivalent pay, benefits and other employment terms. The taking of FMLA leave cannot result in the loss of any benefit that accrued prior to the start of such leave.

In addition, special rules apply if a teacher desires to take FMLA leave near the end of an academic term.

- If a teacher begin FMLA leave more than five weeks before the end of a term, the District may require the employee to continue taking leave until the end of the term if: (i) the leave will last at least three weeks and (ii) the employee would return to work during the three-week period before the end of the term.
- If a teacher begins leave during the five-week period before the end of a term because of the birth of a child, the placement of a child for adoption or foster care, to care for a spouse, child or parent with a serious health condition or to care for a covered servicemember, the District may require the employee to continue to take leave until the end of the term if (i) the leave will last more than two weeks; and (ii) the employee would return to work during the two-week period before the end of the term.
- If a teacher begins leave during the three-week period before the end of the term because of the birth of a child, the placement of a child for adoption or foster care, to care for a spouse, child or parent with a serious health condition or to care for a covered servicemember, the District may require the employee to continue to take leave until the end of the term if the leave will last more than five working days.

In the case of an employee who is required to take leave until the end of an academic term, only the period of FMLA leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement; however, the District shall maintain the employee's group health insurance for the additional leave period required by the District to the end of the term.

Prior to returning from FMLA leave, the District may require that an employee present a certification of fitness to return to work when the absence was caused by the employee's serious health condition.

Failure to return from any leave may result in the employee's termination.

ENFORCEMENT

FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided under FMLA, or to discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under FMLA. FMLA does not affect any Federal or State law prohibiting discrimination. An employee who disagrees with any determination by the District regarding a request for leave, or who believes that he or she has been retaliated against for requesting or taking FMLA leave, may file a complaint with the U.S. Department of Labor or commence a private lawsuit.

NOTICE OF POLICY

The District shall post a notice prepared or approved by the Secretary of Labor stating the pertinent provisions of FMLA, including information concerning enforcement of the law. A copy of the Board Policy and these regulations shall be distributed to current employees and to each new employee upon hire.

Adoption Date: May 18, 2011