

DOVER SCHOOL DISTRICT	POLICY CODE: GCCBC
DATE OF ADOPTION: FEBRUARY 9, 2009	PAGE 1 OF 4

FAMILY AND MEDICAL LEAVE ACT (FMLA) LEAVE POLICY

1. Effective August 5, 1993, (February 5, 1994, for employees subject to collective bargaining agreements) an employee is eligible to request an FMLA leave if the employee has been an employee of the Dover School District for at least twelve (12) months and has worked at least 1250 hours during the twelve (12) month period immediately preceding the leave.

2. Subject to the requirements described in this policy, an eligible employee may request and will be granted up to twelve (12) work weeks of unpaid FMLA leave during any twelve (12) month period for one or more of the following events:

- a. the birth and first year care of a child
- b. the placement of a child for adoption or foster care in the employee's home
- c. the care of the employee's spouse, child, or parent with a serious health condition, or
- d. the employee's serious health condition which renders the employee unable to perform the functions of the employee's position

e. *the care for covered service members with a serious injury or illness and because of qualifying exigencies arising out of the fact that a covered military member is on active duty or has been notified or an impending call or order to active duty in support of a contingency operation.*

1. Qualifying exigency leave—a qualifying exigency arising out of the employee's spouse, son, daughter or parent being on active duty or being notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation—a qualifying exigency includes short-notice deployment; military events and related activities; childcare and school activities, financial and legal arrangements; counseling; rest and recuperation; post-deployment activities; and other activities agreed by the District and employee.

2. Military Caregiver Leave (covered service member leave)—the employee, as the spouse, son, daughter, parent or next of kin of a recovering service member, to care for that service member who has incurred an injury or illness in the line of duty while on active duty in the Armed Forces when that injury or illness has rendered he/she unfit to perform duties of his/her office, grade, rank or rating.

3. For purposes of calculating the amount of FMLA leave an eligible employee can take, the term "during any twelve (12) month period" means a rolling twelve (12) month period measured backward from the date requested leave will be used (but not earlier than the effective date of the FMLA). *For military caregiver leaves, one 26-week leave period in a single 12-month period. The right to take this leave does not renew once a new 12-month period begins and all this leave must be taken in a single 12-month period, although it may*

DOVER SCHOOL DISTRICT	POLICY CODE: GCCBC
DATE OF ADOPTION: APRIL 11, 1994	PAGE 2 of 5

be taken intermittently or on a reduced schedule. Note the employee is entitled to a combined 26 weeks for military caregiver leave and all other types of leave.

4. The taking of FMLA leave shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced; provided, however, that nothing in the FMLA shall entitle any employee who returns from leave to the accrual of any seniority or employment benefits during the period of the leave or 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.

5. Unless one of the exceptions in the law applies, an employee who takes an FMLA leave for the intended purpose of the leave shall be entitled, on timely return from the leave, to be restored to the position of employment held when the leave commenced or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Special rules regarding return to work are applicable to employees, such as teachers, coaches, driving instructors, and special educational assistants, whose principal function is to teach and instruct students in a class, a small group, or an individual setting.

a. When an instructional employee begins leave more than five (5) weeks before the end of an academic term, the employee may be required to continue taking leave until the end of the term if the leave will last at least three (3) weeks and the employee would return to work during the three-week period before the end of the term.

b. If the employee begins leave for a purpose other than the employee's own serious health condition during the five-week period before the end of a term, the employee may be required to continue taking leave until the end of the term if the leave will last more than two (2) weeks and the employee would return to work during the two-week period before the end of the term.

c. If an employee begins leave for a purpose other than the employee's own serious health condition during the three-week period before the end of an academic term and the leave will last more than five (5) working days, the employee may be required to continue taking leave until the end of the term.

6. At the election of the employee, during the period of an FMLA leave any group health plan as defined by the FMLA will be maintained 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 for the duration of the leave. When the employee returns from FMLA leave, the employee is entitled to be reinstated to the group health plan on the same terms as prior to taking the leave, without any qualifying period, physical examination, or exclusion based on preexisting conditions. While on an unpaid FMLA leave, the employee will be responsible for paying the employee's portion of the premium, if applicable, by submitting payment to the district's business office on or before each regular payday. However, if the employee is financially unable to pay his/her portion of the premium during

DOVER SCHOOL DISTRICT	POLICY CODE: GCCBC
DATE OF ADOPTION: APRIL 11, 1994	PAGE 3 of 5

the period of unpaid leave, the employer will pay the employee's share of the premium during that period. This will insure that the employee will be reinstated to the same group health plan, as required by the FMLA. The district will pay these costs subject to recovery from the employee on return from leave, under terms to be determined prior to commencement of the leave. The district may recover its share of the premiums for maintaining coverage for the employee under such group health plan during the period of an FMLA leave if the employee fails to return to work (or returns to work but fails to stay thirty [30] calendar days) for reasons other than the continuation, recurrence, or onset of a serious health condition entitling the employee to leave under paragraphs 2-c or 2-d above or other circumstances beyond the employee's control. Certification of inability to return to work as specified and allowed by the FMLA may be required.

7. Where an employee has accrued paid vacation, personal, or family leave, the employer may require, or the employee may elect, to substitute such accrued leave for all or part of any FMLA leave related to birth, adoption/foster care placement, or care for a seriously ill family member. Substitution of paid accrued vacation, personal, or medical/sick leave may be made for all or part of any otherwise unpaid

FMLA leave needed to care for a family member or the employee's own serious health condition. Upon exhaustion of any unaccrued paid leave, the remainder of any FMLA leave will be unpaid. In no case will the combination of paid and unpaid leave used for an FMLA purpose exceed twelve (12) work weeks in any twelve (12) month period, unless an extension of FMLA leave is granted, under the applicable regulation.

8. FMLA leave for the birth/care of a child or for the placement of a child for adoption or foster care must be taken within the twelve (12) month period which starts on the date of such birth or placement. Regardless of when such leave begins, it will end no later than the end of the twelve (12) month period. Unless specifically permitted, FMLA leave for these purposes cannot be taken on an intermittent or reduced leave schedule.

9. If both spouses are employed by the district, they are limited to a combined total of twelve (12) work weeks of FMLA leave during any twelve (12) month period for the first year care of their child or placement of a child in their home for adoption or foster care. However, each employee may use up to twelve (12) work weeks of FMLA leave during any twelve (12) month period if the leave is to care for the employee's child, spouse, or parent who is suffering from a serious health condition or is necessitated by the employee's own serious health condition.

9. An eligible employee who foresees that a leave will be required for the birth/care of a child or for adoption or foster care placement must notify the district's business office in writing not less than thirty (30) calendar days in advance of the start date of the leave, except that if the date of the birth or adoption requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable under the circumstances, ordinarily meaning at least verbal notification within one or two business days of when the need for leave becomes known to the employee.

DOVER SCHOOL DISTRICT	POLICY CODE: GCCBC
DATE OF ADOPTION: APRIL 11, 1994	PAGE 4 of 5

10. An employee who foresees the need for a leave of absence due to planned medical treatment for the employee or for the employee's spouse, child, or parent should notify the district's business office in writing as early as possible, and shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the district's operations, subject to the approval of the health care provider. Such notice must be at least thirty (30) calendar days in advance of the start of leave, except that if the date of the treatment requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable *or at least 2 business days of when an employee knows of need for the leave.*

11. If the requested leave is to care for a spouse, child, or parent who has a serious health condition, the employee will be required to file with the district's business office in a timely manner a health care provider's statement that the employee is needed to care for a son, daughter, spouse, or parent and an estimate of the amount of time that the employee is needed for such care.

12. If the requested leave is because of a serious health condition of the employee which renders the employee unable to perform the functions of the employee's position, the employee may be required to file with the district's business office a health care provider's statement as allowed by the FMLA.

13. Subject to the limitations and certifications allowed by the FMLA, only leaves taken under paragraphs 2-c and 2-d above may be taken intermittently or on a reduced leave schedule when medically necessary, provided a health care provider certifies the expected duration and schedule of such leave and provided further that such leave is foreseeable based upon planned medical treatment. The employee may be required to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave than the employee's regular position. If an instructional employee requests intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition or for the employee's own serious condition, and the employee would be on leave for more than twenty percent of the total number of working days over the period the leave would extend, the district may require that such employee elect either (a) to take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment or (b) to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that has equivalent pay and benefits, and better accommodates recurring periods of leave than the regular employment position of the employee.

14. An employee on an approved leave under this policy must report to the district's business office every thirty (30) days regarding the employee's status and intent to return to work upon conclusion of the leave. An employee who was granted FMLA leave for his/her own serious health condition may be required to submit a fitness-for-duty certification before returning to work, subject to the terms set forth in the FMLA and regulations.

15. In any case where there is reason to doubt the validity of the health care provider's statement or certification for leaves taken under sections 2-c or 2-d above, the district may,

DOVER SCHOOL DISTRICT	POLICY CODE: GCCBC
DATE OF ADOPTION: APRIL 11, 1994	PAGE 5 of 5

at its expense, require second and third opinions, as specified by the FMLA, to resolve the issue.

16. The provisions of this policy are intended to comply with the Family and Medical Leave Act of 1993, and any terms used from the FMLA will be as defined in the Act or in the U. S. Department of Labor regulations. To the extent that this policy is ambiguous or contradicts the Act or U. S. Department of Labor regulations, the language of the Act or regulations will prevail.

Legal References:

29 CFR Part 825, The Family and Medical Leave Act of 1993; Final Rule