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3430.01 - **FAMILY & MEDICAL LEAVE**

Purpose

Basic Leave Entitlement. The Washtenaw Intermediate School District (District) Family and Medical Leave Policy allows eligible employees to take up to twelve (12) work weeks of unpaid leave per year for their own serious health condition, childbirth, or to provide care for the employees' newborn child, newly-adopted child, newly-placed foster child, or a child, parent or spouse with a serious health condition. Further, certain eligible employees may receive up to twelve (12) work weeks of unpaid leave for military exigencies, and up to a total of twenty-six (26) work weeks of unpaid leave to care for a covered military service member.

Additional information and forms relating to Family and Medical Leaves are available from the Human Resources Department.

Definitions

- A. **"Leave Year"**. The District has selected the twelve (12) month rolling backwards period method for determining the twelve (12) month period for non-military related leave. The twelve (12) month rolling period is calculated backwards from the date the requested leave commences. This method determines FMLA leave entitlement based upon how much FMLA leave an employee has taken the preceding twelve (12) months, measured backwards from the date the leave is to commence.

For "Military Caregiver Leave," the leave period begins the first day the leave begins, regardless of past non-military leave taken and regardless of the leave period for other FMLA qualifying leave.

- B. **"Spouse"** means a husband or wife, but does not include unmarried domestic partners. If both spouses work for the School District, their total leave in any twelve (12) month period may be limited to an aggregate of twelve (12) weeks if the leave is taken for either the birth or placement for adoption or foster care of a child or to care for a sick parent. The aggregated amount of leave in a twelve (12) month period is twenty-six (26) weeks in situations where the leave is based on the care for a covered service member.
- C. **"Parent"** means biological, adoptive, step or foster parent, or any other individual who stood in loco parentis to the employee when the employee was a child. A parent-in-law does not meet this definition.
- D. **"Child"** means a son or daughter under the age of eighteen (18), or eighteen (18) or older who is incapable of self-care due to mental or physical disability. Employees who are in loco parentis include those with day-to-day responsibility for care and who financially supports the "child". A biological or legal relationship is not necessary.
- E. **"Next of Kin of a Covered Service Member"** means the nearest blood relative other than a spouse, parent, son, or daughter in the following order: blood relatives who have been granted legal custody of the covered service member by court decree or statutory provision, brother and sister, grandparent, aunt and uncle, and first cousin, unless the covered service member designated in writing another blood family member as his/her nearest blood relative for purposes of military caregiver leave.
- F. **"Military Family Leave"** means either "Military Caregiver Leave" or "Qualifying Exigency" Leave as set forth below:

1. **"Military Caregiver Leave"** An eligible employee may take up to twenty-six (26) weeks of leave to care for a covered service member during a single twelve (12) month period. The covered service member must be a current member of the Armed Forces, which includes membership in the National Guard or Reserves. The covered service member must have sustained the serious injury or illness in the line of duty while on active duty which may render the service member medically unfit to perform his/her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list. According to the NDAA 2010 Amendments, an employee may also take leave in order to care for a family member who aggravated a pre-existing injury while in the line of duty on Active Duty in the Armed Forces.
2. **"Qualifying Exigency Leave."** An eligible employee with a spouse, son, daughter, or parent on active duty or call to active duty status in the Armed Forces, including National Guard and Reserves may also use their twelve (12) week leave entitlement to address certain qualifying exigencies. Any member of the Armed Forces who is deployed or called to active duty to a foreign country is covered. The Department of Labor defines qualifying exigencies as: (1) short-notice deployment (up to seven (7) days from date of notification), (2) military events and related activities, (3) childcare and school activities, (4) financial and legal arrangements, (5) counseling, (6) rest and recuperation (up to five (5) days for each instance), (7) post-deployment activities occurring within ninety (90) days following the termination of active duty status, and (8) additional activities arising from the service member's active duty or call to active duty not encompassed in the other categories, but agreed to by the employer and employee.

G. **"Serious Health Condition"** means an illness, injury, impairment, or physical or mental condition that involves:

1. inpatient care (an overnight stay);
2. a period of incapacity from work of more than three (3) consecutive calendar days requiring "continuing treatment" (as defined below and in the FMLA regulations) by a healthcare provider;
3. a period of incapacity from work due to pregnancy or for prenatal care;
4. a period of incapacity from work requiring treatment for chronic or permanent/long-term conditions (e.g., asthma, diabetes, epilepsy, cancer); or
5. a period of absence to receive multiple treatments by a health care provider for a non-chronic condition that, if left untreated, could result in a period of incapacity of more than three (3) consecutive calendar days (e.g., dialysis for kidney disease or chemotherapy for cancer).

Unless complications arise, the common cold, flu, upset stomach, headache, routine dental problems and cosmetic treatments do not meet the definition of "serious health condition."

Please contact the Human Resources Department for a more complete definition of "serious health condition."

H. **"Continuing treatment"** by a healthcare provider means a period of incapacity of more than three (3) **full** consecutive calendar days and subsequent treatment or period of incapacity relating to the same condition that also involves either:

1. 1) Treatment of two (2) or more times within thirty (30) days of the first day of incapacity by a healthcare provider; or
2. 2) Treatment on at least one (1) occasion by a healthcare provider which results in a "regimen of continuing treatment under the supervision of a healthcare provider." (e.g. a course of prescription drugs, physical therapy, etc.).
3. 3) The requirements identified in #1 and #2 of this paragraph regarding "treatment" means an "in-person" visit to a health care provider. The in-person (treatment) visit to the healthcare provider must occur within seven (7) days of the first day of incapacity.

I. **"Instructional Employee"** means a person whose principle function is to teach and instruct students in a class, a small group or an individual setting. This term includes teachers or auxiliary personnel principally engaged in direct delivery of instruction (e.g., signers for hearing impaired). This definition does not include auxiliary personnel such as counselors, teacher assistants, aides, psychologists, social workers, and non-instructional support personnel.

J. **"District"** means the Washtenaw Intermediate School District. This policy has been adopted by the Board and shall be implemented by the Superintendent or his/her designee.

General Information

- A. Eligibility. An employee who has worked at least 1,250 hours during the twelve (12) month period before commencement of the leave is eligible for FMLA leave after having completed at least twelve (12) months of service. The 12 months of employment do not have to be consecutive; it includes previous service with the District up to seven (7) years before commencement of the leave. If the employee has a break in service with the District that lasted seven (7) years or more, the time worked prior to the break will not count *unless* the break is due to service covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA), or there is a written agreement (via Collective Bargaining Agreement or otherwise) outlining the District's intention to rehire the employee after the break in service.

Instructional employees will not be eligible if it is clearly demonstrated that the employee did not work the requisite hours during the twelve (12) month period, unless otherwise provided by negotiated language in a Collective Bargaining Agreement.

- B. Eligible employees may use FMLA leave for one or more of the following reasons:

1. the birth of a child and care for a newborn;
2. the care for a newly-adopted child or child recently placed in an employee's home for foster care;
3. to care for a spouse, child (who is less than age eighteen (18) or eighteen (18) but incapable of self-care) or a parent (but not parent-in-law) who has a serious health condition;
4. an employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of his/her job;
5. to address certain qualifying exigencies or caregiving associated with a covered service member. The employee may be required to provide information supporting the need for military family leave.

- C. An eligible employee may take up to twelve (12) weeks unpaid leave during any twelve (12) month period for a purpose which qualifies for a leave under FMLA policy.

As identified under "Definitions" F.1., an eligible employee may take up to twenty-six (26) weeks "Military Caregiver Leave" measured from the first day the military-related leave commences during a single twelve (12) month period. An eligible part-time employee is entitled to leave on a pro-rata basis.

If spouses are both employed by the District and both are eligible for FMLA leave, spouses may take up to a combined total of twelve (12) weeks of leave for the birth and care of a newborn child, the placement of a child in the spouse's home for adoption or foster care, or the care of a seriously ill parent. This limitation does not apply to the care of a spouse or child with a serious health condition or to the employee's own serious health condition. For example, if spouses each take four (4) weeks to care for a newborn child, each spouse will have eight (8) weeks remaining within the twelve (12) month period to use for other kinds of FMLA leaves, if necessary.

Leave under the FMLA, to care for a newborn child or for adoption or foster care placement of a child, must be completed within twelve (12) months of the birth, adoption, or placement of the child.

Notice Requirements

- A. Notice by Employee. The employee shall give notice for FMLA leave according to the following:

1. When the need for FMLA is foreseeable (i.e., for birth of a child, adoption, foster placement, or planned medical treatment for yourself or a family member or to care for a covered service member) thirty (30) days notice is required. If the employee fails to give thirty (30) days notice with no reasonable excuse, the District reserves the right to delay the employee's FMLA leave until at least thirty (30) days after the leave request is made.
2. When the need for FMLA leave is unexpected, absent unusual circumstances, the employee must provide notice to the employer either the same business day or the next business day after the employee learns of the need for the FMLA leave (e.g. pregnancy, cancer, etc.).

3. With respect to both foreseeable and unexpected leave, employees must comply with District policies, work rules, collective bargaining provisions, and customary time off or call-in notice procedures. Failure to comply may result in discipline.
4. When an employee's medical leave/request is six (6) or more consecutive days, the employee is required to provide medical documentation (e.g. District provided medical certification or health care provider's statement) to the Human Resources Department that includes the following information:
 - a. Medical condition/diagnosis;
 - b. Duration of Incapacity (start and end date);
 - c. Treatment date or dates (if any);
 - d. Identification of the essential functions of the employee's position that he/she could not perform during the period of incapacity;
 - e. Work restrictions (if any);
 - f. Return to work date/Fitness to return to work; **and**
 - g. Healthcare provider information (Printed name, signature, address, and telephone number).
5. When an employee's medical leave/request is less than six (6) consecutive days, the District may require medical documentation dependent upon the circumstances and in compliance with the employee's contract, Collective Bargaining Agreement, etc.

B. District Notification

1. When an employee's medical leave/request is six (6) or more consecutive days, the District (thru its Human Resources Department) will provide a copy of the FMLA policy and District- approved forms which advises the employee of his/her FMLA rights and responsibilities.
2. Once the District receives the appropriate District approved medical documentation, the District will notify the employee, in writing, whether he/she is eligible for FMLA leave within five (5) business days (absent extenuating circumstances).
3. Any leave request determined by the District to qualify as FMLA leave will be credited against the employee's FMLA leave for the twelve (12) month period described under "Definitions" Section A of this policy.
4. It is a shared responsibility of employees to contact the Human Resources Department to communicate questions/concerns that he/she may have regarding FMLA eligibility/determinations; this will ensure prompt attention and proper administration of the regulations.

Use of Accrued Leave

Use of Sick Leave

If an employee that may be eligible for FMLA has accrued sick leave available to cover the medical leave period, the employee may decide not to apply for FMLA.

If an employee is eligible to use leave under the FMLA, the employee may opt to use unpaid FMLA leave concurrently with accrued sick leave to remain in paid status (unless otherwise specified by a collective bargaining agreement or individual employment contract).

Medical Documentation

- A. If an employee requests FMLA leave due to a serious health condition or to care for a parent, child, or spouse with a serious health condition, or to attend to specific matters concerning covered service member, the employee shall be required to provide the District provided medical certification form or physician or health care provider statement/note that includes the following information:

1. Medical condition/diagnosis;
 2. Duration of Incapacity (start and end date);
 3. Treatment date or dates (if any);
 4. Identification of the essential functions of the employee's position that he/she could not perform during the period of incapacity;
 5. Work restrictions (if any);
 6. Return to work date/Fitness to return to work; and
 7. Healthcare provider information (Printed name, signature, address, and telephone number).
- B. The employee may be required to provide supporting information concerning military family leave. Forms for this purpose will be provided by the Human Resources Department when the employee notifies the District of the need for the leave.

Employees must provide the requested medical documentation within fifteen (15) days of being supplied with the necessary certification form from the Administration or a request for FMLA leave may be delayed or denied.

- C. After an employee submits the required medical documentation, the District may require, at its option and expense that a medical certification be obtained from a healthcare provider of the District's own choosing to verify the need for the requested FMLA leave. If the first and second certifications differ, the District may require (at its option and expense) that a third certification be obtained from a third healthcare provider who is jointly selected by the prior two healthcare providers. The third medical certification will be final and binding on both parties. If the employee refuses to be examined by the third healthcare provider or refuses to cooperate in the examination, the employee will be bound by the second certification.
- D. The District may request medical recertification for leave taken because of an employee's own serious medical condition or the serious medical condition of a family member. Recertification may be requested pursuant to the following:
1. The District may request recertification no more often than every thirty (30) days and only in connection with the absence by the employee, unless paragraphs 2 or 3 below apply.
 2. If the initial medical documentation indicates that the minimum duration of the condition is more than thirty (30) days, the District will wait until the minimum duration expires or six (6) months, whichever is less, before requesting a recertification, unless paragraph 3 applies.
 3. The District may request recertification in less than thirty (30) days if:
 - a. An employee requests an extension of leave;
 - b. Circumstances described by the previous documentation changed significantly; or
 - c. The District receives information that cast doubt upon the employee's stated reason for the absence or the continuing validity of the documentation.

The employee must provide the requested recertification to the District within fifteen (15) calendar days unless it is not practicable under the particular circumstances to do so despite the employee's diligent good faith efforts. The District may ask for the same information as that permitted for the original documentation. The employee has the same obligations to participate and cooperate in the recertification process as in the initial certification process. Any recertification requested by the employer shall be at the employee's expense unless the District provides otherwise (e.g., District policy or collective bargaining agreement).

Intermittent/Reduced-Leave Schedule

- A. If an employee requests intermittent leave or a reduced leave schedule, the District may require the employee to explain why the intermittent/reduced leave schedule is necessary. An employee must meet with the District and attempt to work out a leave schedule which meets the employee's needs for leave without unduly disrupting the District's operations. The employee should meet with the District before treatment is scheduled. If the meeting takes place after treatment has been scheduled, the District may, in certain instances, require an employee to attempt to reschedule treatment.

- B. The District may assign an employee to an alternative position with equivalent pay and benefits, but not necessarily equivalent job duties that better accommodate the employee's intermittent or reduced leave schedule. The District may also transfer the employee to a part-time job with the same rate of pay and benefits. A "light-duty" assignment, however, will not be considered FMLA leave. Where benefits (e.g., vacation) are based on the number of hours worked, the employee will receive appropriate benefits, based upon hours worked. When a transfer to a part-time position has been made to accommodate an intermittent or reduced-leave schedule, the District will continue group health benefits on the same basis as provided for fulltime employees until the twelve (12) (or twenty-six (26) weeks for the care of a covered service member) weeks of FMLA leave are used.
- C. An intermittent and/or reduced leave schedule is available for an eligible employee to attend to a serious health condition requiring periodic treatment by a healthcare provider, or because the employee (or family member) is incapacitated due to a chronic serious health condition. Employees on pregnancy leave (unless a serious health condition is involved) or leave for care of an adopted, foster, or newborn child is not eligible for intermittent leave.
- D. If an eligible instructional employee requests intermittent or a reduced leave schedule to care for a family member having a serious health condition, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the instructional employee would be on leave for more than twenty percent (20%) of the total number of working days over the leave period, the District may require the instructional employee to choose either to:
1. take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment;
or
 2. transfer temporarily to an available alternative position for which the instructional employee is qualified, which has equivalent pay and benefits and which better accommodates recurring leave periods than does the instructional employee's regular assignment.

Benefits

A. Continuation of Benefits

During the period of an approved FMLA leave, the District will continue the employee's health insurance premium uninterrupted. If the employee makes a contribution toward coverage, the employee must make arrangements to continue his/her contributions during the leave to continue the basic health insurance coverage at its existing level. An employee's failure to pay his/her share of health insurance premium during FMLA leave may result in loss of coverage if the employee's contribution is more than thirty (30) days late. If the employee's premiums are in arrears, the District will provide the employee at least fifteen (15) days written notice that coverage will be dropped prior to cancelling coverage.

1. Except as required under COBRA, the District's obligation to maintain health benefit premium contributions for an employee on FMLA leave ceases when:
 - a. the employment relationship would have terminated, irrespective of the FMLA leave (e.g., reduction in force);
 - b. when the employee advises the District of his/her intent not to return from leave; or
 - c. when the FMLA leave expires and the employee has not returned from leave.
2. Employee contributions will be required either through payroll deduction or by direct payment to the District. The employee will be advised in writing at the beginning of the leave (or as soon thereafter as practical) as to the amount and method of payment. Employee contribution amounts are subject to any change in premium rates that occur while the employee is on leave.
3. If the District remits any employee premium contributions in arrears from the employee while on FMLA leave, the employee will be required to reimburse the District for delinquent payments (through authorized payroll deduction or otherwise) upon return from leave. If the employee fails to return from unpaid leave for reasons other than (a) the continuation, recurrence, or onset of a serious health condition of the employee or a covered family member, or (b) circumstances beyond the employee's control, the District may seek reimbursement from the employee for the portion of the premiums paid by the District on behalf of that employee (also known as the "employer contribution") during the leave period, excluding the period where the District or the employee substituted paid leave for FMLA leave.

4. An employee is not entitled to seniority or benefits accrual (e.g., holidays, vacations) during the unpaid leave, unless otherwise specified by the collective bargaining agreement or individual employment contract. An employee who takes FMLA leave will not lose any seniority or employment benefits that accrued before the date leave began.

B. Disability Plans and FMLA Leave

1. **Workers' Compensation Leave.** If the employee has a work-related illness or injury that qualifies as a "serious health condition" under this policy, leave from the job for which the employee receives workers' compensation payments will be considered FMLA leave. The employer and employee may agree to have paid leave supplement worker's compensation benefits, i.e., where worker's disability compensation benefits provide replacement income for only a portion of the employee's salary.
2. **Disability Plan Leave.** The District may designate any employer sponsored disability plan leave as FMLA leave.

Return to Work

- A. Upon conclusion of FMLA leave, an employee will be returned to the same position the employee held when leave began or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment, provided the position remains.
- B. If an instructional employee (i.e., a person whose principle function is to teach and instruct students in a class, a small group or an individual setting) begins FMLA leave more than five (5) weeks before the end of a semester, the District may require that the leave be taken until the conclusion of the semester if the leave is to last at least three (3) weeks and the instructional employee would return to work during the three (3) week period before the conclusion of the semester.

If an instructional employee begins FMLA leave (other than for the instructional employee's own serious health condition) during the five (5) week period before the end of a semester, the District may require that leave be taken until the end of the semester if the instructional employee would return to work during the two (2) week period immediately before the end of the semester and if the leave period is to last more than two (2) weeks.

If an instructional employee begins FMLA leave (other than for the instructional employee's own serious health condition) during the three (3) week period before the end of a semester and the leave will last more than five (5) working days, the District may require the instructional employee to take leave until the end of the semester.

- C. **Fitness-for-Duty Certification.** An employee shall submit a written statement from a physician which addresses the employee's ability to return to work and perform the essential functions of the position, consistent with District policy or collective bargaining agreement.

In the case of intermittent or reduced schedule leave, where reasonable job safety concerns exist, the District may require the employee to provide a fitness-for-duty certification up to once every thirty (30) days before s/he may return to work.

Key Employees

- A. **Definition.** A "key" employee is an eligible salaried FMLA-eligible employee who is among the highest paid ten percent (10%) of District employees.
- B. **Job Restoration.** While the District will not deny FMLA leave to an eligible key employee, the District may deny job restoration to a key employee when the restoration to employment will cause the District substantial and grievous economic injury or substantial, long-term economic injury.
- C. **Qualifications.** Each employee who is designated as a "key" employee will be notified of that fact when s/he requests FMLA leave or at the commencement of such leave, whichever occurs first; or if the notice cannot be given then because of the need to determine whether the employee is a key employee, as soon thereafter as practical.

In any situation in which the District determines that it will deny restoration or employment to a key employee, the District will issue a hand-delivered or certified letter to the key employee explaining the finding that the required injury to the District exists. Additionally, the District will inform the key employee of the potential consequences with respect to reinstatement and maintenance of health benefits should employment restoration be denied. When practical, the District

