



NEBO SCHOOL DISTRICT BOARD OF EDUCATION POLICIES AND PROCEDURES

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POLICY TITLE: Family and Medical Leave Act of 1993
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1. PURPOSE AND PHILOSOPHY

The Family and Medical Leave Act of 1993 (FMLA) requires covered employers to provide up to twelve (12) weeks of unpaid, job-protected leave to “eligible” employees for certain family and medical reasons. Eligible employees are also entitled to up to twelve (12) weeks of leave because of “any qualifying exigency” arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation. The Secretary of Labor of the United States issues regulations defining “any qualifying exigency.” Employees are eligible if they have worked for a covered employer for at least one (1) year, and for 1,250 hours over the previous twelve (12) months, and if there are at least fifty (50) employees within seventy-five (75) miles.

2. DEFINITIONS

- 2.1 “Covered employer”** – Any employer with fifty (50) or more employees within seventy-five (75) miles.
- 2.2 “Eligible employees”** – Employees who have worked for the District for at least 1,250 hours during the immediate preceding twelve (12) month period prior to any request for leave under this policy, or any certified employee of the District who has been employed full-time for at least twelve (12) months by the District.
- 2.3 “Employment benefits”** – All benefits provided by the District to its employees, such as group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pension or retirement benefits.
- 2.4 “Health care provider”** – A licensed doctor of osteopathy or medicine.
- 2.5 “Parent”** – The natural or adoptive parent of a child or legal guardian who acts in the place of a parent.
- 2.6 “Qualifying exigency”** – A military action where United States forces are involved and are defined by the Secretary of Labor.
- 2.7 “Serious health condition”** – An illness, injury, impairment, or physical or mental condition that requires:

- 2.7.1 Inpatient care consisting of an overnight stay in a hospital, hospice, or residential medical facility and subsequent treatment; OR
- 2.7.2 Continuing treatments by a health care provider, which includes:
 - 2.7.2.1 Periods of inability to work more than three (3) consecutive calendar days that also involves treatment two (2) or more times by a health care provider or at least one (1) time which results in a regimen of continuing treatment;
 - 2.7.2.2 Any period of incapacity due to pregnancy or prenatal care;
 - 2.7.2.3 Any period of incapacity or treatment due to a chronic, serious health condition which:
 - 2.7.2.3.1 Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - 2.7.2.3.2 Continues over an extended period of time (including recurring episodes of a single underlying condition); AND
 - 2.7.2.3.3 May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);
 - 2.7.2.4 A period of incapacity which is permanent or long-term due to a serious health condition for which treatment may not be effective, such as Alzheimer's disease, severe stroke, or terminal stages of a disease; OR
 - 2.7.2.5 Any period of absence to receive multiple treatments by a health care provider for restorative surgery or for treatment leading to incapacity for more than three (3) consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).
- 2.8 **“Son or daughter”** – A biological, adopted, or foster child; a stepchild; or a legal ward of a person who acts as parent. A child is: (a) less than eighteen (18) years of age; or (b) older than eighteen (18) years, but incapable of self-care due to mental or physical disability.
- 2.9 **“Spouse”** – A legal husband or wife as described in the Constitution of the State of Utah.

3. REASONS FOR TAKING LEAVE

- 3.1 Unpaid leave must be granted for any of the following reasons:
 - 3.1.1 To care for the employee's child after birth, placement for adoption, or foster care;
 - 3.1.2 A father, as well as a mother, can take family leave for the birth, placement for adoption, or foster care of a child;
 - 3.1.3 To care for the employee's spouse, son or daughter, or parent who has a serious health condition; or for a serious health condition that makes the employee unable to perform the employee's job; OR
 - 3.1.4 For a spouse, son, daughter, parent, or next-of-kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active

duty, or is otherwise on the temporary retirement list, is entitled up to twenty-six (26) weeks of leave in a single twelve (12) month period to care for the service member. This military caregiver leave is available during a “single twelve (12) month period” during which an eligible employee is entitled to a combined total of twenty-six (26) weeks of all types of FMLA leave.

- 3.2** At the employee’s or employer’s option, certain kinds of paid leave may be substituted for unpaid leave.

4. ADVANCE NOTICE AND MEDICAL CERTIFICATION

- 4.1** The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

4.1.1 The employee ordinarily must provide thirty (30) days advance notice when the leave is “foreseeable.”

4.1.2 An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer’s expense) and a fitness for duty report to return to work.

4.1.3 The employee shall make a reasonable effort to schedule treatment so as not to unduly disrupt the operations of the District.

4.1.4 Medical certification must include the following:

4.1.4.1 The date on which the serious health condition commenced.

4.1.4.2 The probable duration of the condition.

4.1.4.3 If additional treatments will be required for the condition, an estimate of the probable number of such treatments.

4.1.4.4 Which part of the definition of “serious health condition,” if any, applies to the patient’s condition and the medical facts which support the certification, including a brief statement as to how the medical facts meet the criteria of the definition.

4.1.4.5 If medical leave is required for the employee’s absence from work because of the employee’s own condition (including absences due to pregnancy or a chronic condition), whether the employee:

4.1.4.5.1 Is unable to perform work of any kind.

4.1.4.5.2 Is unable to perform any one or more of the essential functions of the employee’s position, including a statement of the essential functions the employee is unable to perform, based on either information on a statement from the employer of the essential functions of the position or, if not provided, discussion with the employee about the employee’s job functions.

4.1.4.5.3 Must be absent from work for treatment.

4.1.4.5.4 A statement that the serious medical condition prevents the employee from performing the tasks of the position or that

requires the employee to attend and care for a son, daughter, spouse, or parent.

5. JOB BENEFITS AND PROTECTION

- 5.1 For the duration of FMLA leave, the employer must maintain the employee's benefits, including health coverage under any "group health plan," as described above.
- 5.2 Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- 5.3 The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.
- 5.4 If an employee fails to return to work after leave expires for reasons other than continuation, recurrence, or onset of a serious health condition of the employee, son, daughter, or spouse, then the District may recover the premium paid for maintaining coverage for the employee during the leave period.

6. UNLAWFUL ACTS BY EMPLOYERS

- 6.1 FMLA makes it unlawful for any employer to:
 - 6.1.1 Interfere with, restrain, or deny the exercise of any right provided under FMLA; OR
 - 6.1.2 Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

7. ENFORCEMENT

- 7.1 The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- 7.2 An eligible employee may bring civil action against an employer for violations.
- 7.3 FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

8. ADDITIONAL INFORMATION

For additional information, contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

EXHIBITS

None

REFERENCES

Family and Medical Leave Act of 1993, 29 U.S.C., §2601, et seq. & 29 C.F.R., Part 825, et seq.

FORMS

None
