

Code:
Adopted:

Family Leave Policy

Purpose:

Eligibility: Any employee who has worked for Madrone Trail Public Charter School for a minimum of 12 (6?) months, working an average of 25 hours per week. For parental leave purposes, an employee becomes eligible upon completing at least 12 (6?) months immediately preceding the date on which the parental leave begins. There is no minimum average number of hours worked per week when determining employee eligibility for parental leave.

In determining that an employee has been employed for the preceding 12 (6?) months, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. If an employee continues to be employed by a successor in interest to the original employer, the number of days worked are counted as continuous employment by a single employer.

In determining 25 hours average workweek, the employer must count the actual hours worked using guidelines set out pursuant to the Fair Labor Standards Act.

Definitions

“Child ¹” - For the purpose of taking parental leave under state law, means a biological, adopted or foster child, stepchild of the employee, or a child with whom the employee is or was in a relationship of “in loco parentis.” A legal or biological relationship is not required. The child must be under 18 years of age or may be 18 years of age or older if incapable of self-care due to mental or physical disability.

¹For the Family Leave Policy, the age of the son or daughter at the onset of a disability is not relevant in determining a parent’s entitlement to the Family Medical Leave Policy.

“Contingency operation” is a military operation that:

1. Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are, or may become involved in military actions, operations or hostilities against an enemy of the United States or against an opposing military force; or
2. Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305 or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.

“Covered active duty” means:

1. In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
2. In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of Title 10, United States Code.

“Covered service member” means:

1. A member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status or is otherwise on the temporary disability retired list for a serious injury or illness; or
2. A veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the

date on which the veteran undergoes that medical treatment, recuperation or therapy.

“Family member” for purposes of the Family Medical Leave Policy, means a(n):

1. Spouse²;
2. Child of the employee (biological, adopted, foster or step child, a legal ward, or child of the employee standing in loco parentis);
3. Custodial parent;
4. Noncustodial parent;
5. Biological parent;
6. Adoptive parent;
7. Stepparent or foster parent;
8. Individual who was in loco parentis to the employee when the employee was a child.

²“Spouse” means individuals in a marriage including “common law” marriage and same-sex marriage. For the Family Leave Policy spouse also includes same-sex individuals with a Certificate of Registered Domestic Partnership.

Additionally, when defining “family member” under the Family Leave Policy, this definition includes a:

1. Grandparent;
2. Grandchild; or
3. Parents-in-law or the parents of an employee’s registered domestic partner.

For Family Medical Leave purposes, an employee’s child in any of these categories may be either a minor or an adult child at the time serious health condition leave, sick child leave or the death of a family member leave is taken.

“Next of kin” means the nearest blood relative of the eligible employee.

“Serious health condition,” under federal law means an illness, injury, impairment or physical or mental condition that involves:

1. Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility;
2. Any period of incapacity requiring absence from work, school or other regular daily activities, of more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider;
3. Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days;

4. Illness, disease or condition is terminal, requires constant care and poses an imminent danger of death; or
5. Disability due to pregnancy, childbirth or prenatal care.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three 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.

An employee is unable to perform the functions of the position when the health care provider finds that the employee is unable to work at all or is unable to perform any of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act of 1990 and Americans with Disabilities Act Amendments Act of 2008 (ADA) federal regulations. The district has the option, in requiring medical verification from a health care provider, to provide a statement of the essential functions of the employee's position for the provider to review.

A "serious health condition" under state law means an illness, injury, impairment or physical or mental condition of an employee or family member that:

1. Requires inpatient care in a hospital, hospice or residential medical care facility such as a nursing home. When a family member resides in a long-term residential care facility, leave shall apply only to:
 - a. Transition periods spent moving the family member from one home or facility to another, including time to make arrangements for such transitions;
 - b. Transportation or other assistance required for a family member to obtain care from a physician;
 - c. Serious health conditions as described in this regulation.

2. The treating health care provider judges to pose an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;
3. Requires constant or continuing care such as home care administered by a health care professional;
4. Involves a period of incapacity. "Incapacity" is the inability to perform at least one essential job function, or to attend school or to perform regular daily activities for more than three consecutive calendar days and any subsequent required treatment or recovery period relating to the same condition. This incapacity must involve:
 - a. Two or more treatments by a health care provider;
 - b. One treatment plus a regimen of continuing care.
5. Results in a period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues over an extended period of time and may cause episodic rather than a continuing period of incapacity such as asthma, diabetes or epilepsy;
6. Involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, a severe stroke or terminal stages of a disease;
7. Involves multiple treatments for restorative surgery or for a condition such as chemotherapy for cancer, physical therapy for arthritis or dialysis for kidney disease that if not treated would likely result in incapacity of more than three days; or

8. Involves any period of disability of a female due to pregnancy or childbirth or period of absence for prenatal care.

“Serious injury or illness,” for the purpose of caring for a covered service member, means:

1. In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces, or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member’s office, grade, rank or rating; and

2. In the case of a covered veteran, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty, on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:

- a. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member’s office, grade, rank or rating; or
- b. A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or
- c. A physical or mental condition that substantially impairs the covered veteran’s ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or
- d. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Purpose of Leave

The Family Leave Policy allows eligible employees to take leave for the following purposes, commonly referred to as parental leave, serious health condition leave, pregnancy disability leave, injured service member leave, military family leave, leave for the death of a family member or sick child leave:

1. Birth of the employee's child (eligibility expires 12 months after the birth);
2. Placement of a child for adoption (or foster care?), when the child is under 18 years of age (eligibility expires 12 months after placement) or when a child is older than 18 years of age if incapable of self-care because of mental or physical disability;
3. Care of a family member with a serious health condition;
4. Employee's own serious health condition.
5. Eligible employees may take leave for a qualifying exigency while the employee's spouse, son, daughter or parent is on covered active duty or called to covered active duty status during the deployment of the member with the Armed Forces to a foreign country." (CFR section 825.126(a)(1 and 2); Federal Register Vol. 78, No. 25, Page 8917);
6. Injured Service Member Leave allows an employee leave to care for a covered service member who is the employee's spouse, son, daughter, parent or next of kin who has been injured in the line of duty as a member of the Armed Forces;
7. Employees may take leave for the care of a sick or injured child who requires home care but is not suffering from a serious health condition. The school is not required to grant leave for routine medical or dental appointments;

8. Employees may take leave for the death of a family member to attend the funeral or alternative to a funeral of the family member, make arrangements necessitated by the death of the family member or grieve the death of the family member;
9. Military Family Leave allows leave for a spouse of a military personnel per each deployment of the spouse when the spouse has either been notified of an impending call to active duty, has been ordered to active duty or has been deployed or on leave from deployment.
10. Female employees may take leave for an illness, injury or condition related to pregnancy or childbirth that disables the employee from performing her work duties

Length of Leave

An employee eligible for Family Leave is allowed a total of 12 months for parental leave (purposes “1”, “2”, and “10” listed above). An employee eligible for Family Leave is allowed a total of 6 months of leave within a 12 month period for family medical leave (purposes “3”, “4”, “7”, and “8” listed above).

An employee eligible for Military Caregiver Leave is entitled to a total of 26 work weeks of leave to care for a covered service member during a single 12-month period. The 12-month period begins when the Military Caregiver Leave begins.

Parental leave must be taken in one uninterrupted period - unless the employer approves otherwise - and must be completed within 12 months of the birth, adoption or placement of the child. An exception must be made to allow parental leave to effectuate adoption or foster placement of the child. Such leave need not be taken in one, uninterrupted period with any additional parental leave.

(Sick child leave need not be provided if another family member, including a noncustodial biological parent, is willing and able to care for the child.?)

For the purpose of intermittent leave, leave entitlement is calculated for an employee by multiplying the number of hours the employee normally works per week by 12. (For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a

total of 360 hours leave.) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks worked prior to the beginning of the leave period shall be used for calculating the employee's normal workweek. (For example, an employee working an average of 25 hours per week is entitled to 12 times 25 hours, or a total of 300 hours leave.) If an employee takes intermittent or reduced work schedule leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of leave to which the employee is entitled.

An eligible employee, who has previously qualified for and taken some portion of family medical leave, may request additional family medical leave within the same leave year. The employee must re-qualify as an eligible employee for each request unless one of the following exceptions apply:

1. An employee granted leave for a serious health condition for the employee or a family member need not re-qualify if additional leave is taken in this leave year for the same reason.

Intermittent Leave and Alternate Duty ???

Intermittent leave for school teachers is subject to special rules ???

Calculating the 12-Month Period for Leave

(The district will use the same method for calculating the 12-month period in which the 12 workweek FMLA and OFLA leave entitlement occurs for all employees. The school will use a "rolling" 12-month period measured backward from the date the employee uses any family and medical leave.

Leaves to care for covered service members has its own 12-month year beginning on the first day of leave regardless of the district's method of calculating the 12-month period for leave.)

Paid/Unpaid Leave

Family leave under the Family Leave Policy is generally unpaid. The district requires the employee to use any unused sick leave or personal leave days before taking parental or family medical leave without pay for the leave period.

An employee who qualifies for the Family Leave Policy may apply for up to (?) paid leave from days available in the Family Leave Fund. See Family Leave Fund Policy for application process.

Continuation of Health Insurance Benefits

The school will continue group health insurance benefits and premium payments for up to 6 months of the leave period. Employees excepting a cash payout in place of insurance benefits, will not receive this cash payout during the leave period.

Return to Work

After leave, an employee is entitled to be returned to the same position the employee held when leave commenced.

Fitness-for-Duty Certification

If the leave was required for the employee's own serious health condition, including intermittent leave, the school may require the employee to obtain and present a fitness-for-duty certification from the health care provider that the employee is able to resume work. The certification will specifically address the employee's ability to perform the essential functions of the employee's job as they relate to the health condition that was the reason for the leave. If the school is going to require a fitness-for-duty certification upon return to work, the school must notify the employee of such requirement when the leave is designated as family medical leave. The school is responsible for any co-pay or other out-of-pocket costs incurred by the employee in providing certification. Failure to provide the fitness-for-duty certification may result in a delay or denial of reinstatement.

Application

An employee shall provide at least 30 days notice prior to the leave date if the leave is foreseeable. The notice shall be written and include the anticipated start, duration and reasons for the requested leave. The employee must make a reasonable effort to schedule treatment,

including intermittent leave and reduced leave, so as not to unduly disrupt the operation of the school.

When an employee is able to give advance notice and requests leave, an employer may request additional information to determine that the leave qualifies for the Family Leave Policy. The employer may designate the employee as provisionally on leave until sufficient information is received to make a determination. An employee able to give advance notice of the need to take leave must follow the employer's known, reasonable and customary procedures for requesting any kind of leave.

If advance notice is not possible, for example due to a change in circumstances or medical emergency, an employee must provide oral or written notice within 24 hours of commencement of the leave in unanticipated or emergency leave situations. The employee may designate a family member or friend to notify the school during that period of time.

In either case, proper documentation must be submitted no later than three working days following the employee's return to work.

Failure of an employee to provide the required notice for FMLA leave may result in the district delaying the employee's leave for up to 30 days after the notice is ultimately given.

Medical Certification

When an employee provides 30 or more days notice when applying for leave, other than for parental leave, the employer may require the employee to provide medical documentation when appropriate to support the request for leave. The school will provide written notification to employees of this requirement within five working days of employee's request for leave. If the employee provides less than 30 days notice, the employee is required to submit such medical certification no later than 15 calendar days after receipt of the district's notification that medical certification is required.

An employer may not delay the taking of a leave in the event that medical certification is not received prior to the commencement of a leave taken subject to the timelines set forth in this regulation. The employer may designate the leave as provisionally approved subject to medical certification. The employer shall provide the employee with written notice of any requirement to provide medical certification of the need for leave and the consequences for failure to do so. The employee must be allowed a minimum of 15 days to provide medical certification.

If an employee has taken sick child leave on all or any part of three separate days during a leave year, the employer may require medical certification on the fourth day or subsequent occurrence of sick child leave within that leave year. The employer must pay the cost of the medical certification not covered by insurance or other benefit plan. The opinion of the health care provider shall be binding. The employer may not require the employee to obtain a second opinion. The employer is not required to request medical certification for sick child leave exceeding three days and may make such requests at the employer's discretion.

Record Keeping/Posted Notice

The school will maintain all records of the leave including dates leave is taken by employees, identified separately from other leave; hours/days of leave; copies of general and specific notices to employees, including Board policy(ies) and regulations; premium payments of employee health benefits while on leave and records of any disputes with employees regarding granting of leave.

Medical documentation will be maintained separately from personnel files as confidential medical records.