

## RSU 63

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  - b. Title: Family Medical Leave - Administrative Procedures
  - c. Author: Superintendent/Board of Directors
  - d. Replaces Policy:
  - e. Date Approved: 01/24/2022 RSU #63
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  - g. Policy Expiration: Review as Needed
  - h. Responsible for Review: Superintendent & Policy Committee
  - i. Date Reviewed: 12/19/2021 Superintendent  
01/10/2022 Policy Committee
  - j. References:
- Legal Reference: 26 MRSA § 843 et seq.
- k. Narrative:

The following administrative procedure covers the main provisions of the Federal & Maine Family Medical Leave Act (FMLA). The guidelines in no way attempt to modify the statute, which should always be referred to when questions about implementation arise. RSU #63 (the District) is responsible for analyzing each employee request for leave to determine whether they are eligible under the federal and/or state statutes, employment policies, and collective bargaining agreements. When an employee is eligible for leave under both the federal and state statutes, the applicable law with regard to each benefit will be the one, which provides the greater benefit.

### I. ELIGIBILITY

- A. Federal Family Medical Leave: To be eligible, employees must work at a site where 50 or more employees of the same school board are employed within 75 miles of that work site. An employee must have been employed by the District for at least twelve (12) months and have worked at least 1,250 hours in the previous twelve-month period. According to the law, teachers employed on a full-time basis are presumed to meet the minimum hours requirement.
- B. Maine Family Medical Leave: To be eligible, employees must work at a site where there are fifteen (15) or more employees of a school board. An employee must have been employed by the same employer for twelve (12) consecutive months and not taken such leave within the immediately preceding twenty-four (24)-month period, or have used less than ten (10) weeks of family medical leave.

### II. BENEFITS

- A. Federal Family Medical Leave: Under certain conditions, eligible employees, if qualified, may be entitled to up to twelve (12) weeks or twenty-six (26) weeks leave in a twelve (12) month period with continuing participation in the Districts' group insurance plan.

The twelve (12) month period for FMLA purposes will be the same for all employees and is defined as the fiscal year.

Unpaid leave will be granted to eligible employees for any of the following reasons:

1. The birth and care of a child;
2. The adoption or foster placement of a child with the employee;
3. To care for a spouse, domestic partner, child, grandchild, domestic partner/spouse's grandchild, or parent with a serious health condition; or
4. The employee is unable to perform the functions of their position because of a serious health condition.

**B. Maine Family Medical Leave Act:** Eligible employees are entitled to up to ten (10) weeks of leaving during the twenty-four (24) month period for the following reasons:

1. Serious health condition of the employee;
2. Birth of the employee's child or the employee's domestic partner's child;
3. Placement of a child sixteen (16) years of age or less in connection with the adoption of the child by the employee or the employee's domestic partner/spouse;
4. Serious health condition of a child, domestic partner's child, grandchild, domestic partner/spouse's grandchild, parent, domestic partner or spouse. (Serious health condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, or continuing treatment by a health care provider);
5. The donation of an organ of the employee for a human organ transplant; or
6. The death or serious health condition of the employee's spouse, domestic partner, parent, child, grandchild, domestic partner/spouse's grandchild, or child of the spouse/domestic partner, as a member of the state military forces, as defined in Title 37-B, section 102 of the Maine Revised Statutes, or of the United States Armed Services, including the National Guard and Reserves, dies or incurs a serious health condition while on active duty.

### **III. DOMESTIC PARTNER DEFINED**

**A. Maine Family Medical Leave:** For the purpose of determining eligibility for Maine Family Medical Leave, "domestic partner" means the partner of an employee who:

1. Is a mentally competent adult as is the employee;
2. Has been legally domiciled with the employee for at least twelve (12) months;
3. Is not legally married to or legally separated from another individual;
4. Is the sole partner of the employee and expects to remain so;
5. Is not a sibling of the employee; and
6. Is jointly responsible with the employee for each other's common welfare as evidenced by joint living arrangement, joint financial arrangements, or joint ownership of real or personnel property.

#### IV. MILITARY FAMILY LEAVE

##### A. Federal Family Medical Leave:

###### 1. Military Caregiver Leave

An eligible employee who is a relative of a service member can take up to twenty-six (26) weeks in a twelve (12) month period in order to care for a covered service member who is seriously ill or injured in the line of duty, or a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness that occurred any time during the five years preceding the date of treatment.

###### 2. Qualified Exigency Leave (applies to eligible employees with family members who are in the National Guard or Reserves, and Regular Armed Forces)

a. An eligible employee can take up to the normal twelve (12) weeks of leave, if a family member who is a member of the National Guard or Reserve is called up to active duty on a contingency mission.

###### b. Qualifying exigencies include:

1. An eligible employee can take up to the normal twelve (12) weeks of leave, if a family member who is a member of the National Guard or Reserve is called up to active duty on a contingency mission.

###### 2. Qualifying exigencies include:

- i. Short-notice deployment;
- ii. Military events and related activities;
- iii. Childcare and school activities;
- iv. Financial and legal arrangements;
- v. Counseling;
- vi. Rest and recuperation;
- vii. Post-deployment activities; and
- viii. Additional activities agreed to by the employer and the employee.

#### V. ADMINISTRATION

##### A. Federal and Maine Family Medical Leave:

1. The District may require certification from a physician to verify the amount of leave requested. An employee who in good faith relies on treatment by prayer or spiritual means, in accordance with the tenets and practice of a recognized church or religious denomination, may submit certification from an accredited practitioner of those healing methods.
2. An employee requesting leave will provide at least thirty (30) days' notice of the intended dates upon which the leave will commence and terminate, unless prevented by medical emergency from giving notice.
3. Upon an employee's return to work, they will be restored to their previous position or to a position with equivalent seniority status, benefits, pay and other conditions and terms of employment.
4. When an employee is eligible for leave under both the Federal and Maine statutes, the applicable law will be the one that provides the greater benefit.

**B. Federal Family Medical Leave:**

1. An employee who is not eligible for Federal FMLA leave may be eligible for leave under the Maine FMLA.
2. The District will analyze each request to determine eligibility for Federal and/or Maine FMLA leave.

**C. Maine Family Medical Leave:**

1. Any leave taken for Maine Family Medical Leave qualifying purposes, including leave taken under other applicable statutes, employment policies, collective bargaining agreements or contracts, will also be considered leave under the Maine Family Leave and will be applied to an employee's 10-week Maine Family Medical Leave entitlement every twenty-four (24) month period. When paid leave taken for Maine Family Medical Leave qualifying purposes is exhausted, the balance of Maine Family Medical Leave will be unpaid.
2. During Maine Family Medical Leave, an employee will be permitted to continue their medical insurance plan, providing the employee remits the monthly premium to the Superintendent's Office no later than the first day of the month for which the premium is due.
3. An employee taking Maine Family Medical Leave for their own serious health condition may be required to submit certification that they are fit to return to work and able to perform the functions of the position.
4. If, at the end of the allowable leave under Maine Family Medical Leave, the employee is unable to return to work because of their own serious health condition, the Superintendent and School Board may consider a request for extension of unpaid leave and benefits on a case-by-case basis. Failure to return to work upon the expiration of Maine Family Medical Leave may subject the employee to immediate termination unless such an extension is granted.
5. An employee who is not eligible for Maine Family Medical Leave may be eligible for Federal Family Medical Leave.

**VI. MEDICAL CERTIFICATION**

**A. Federal and Maine Family Medical Leave:**

1. A sick leave request form is to be completed whenever an employee is absent from work for more than three (3) days or when an employee has need to be absent from work for more than three (3) days or when an employee has need to be absent from work for continuing treatment by (or under the supervision of) a health care provider.
2. The District will require medical certification to support a request for FMLA leave because of a serious health condition (at employee's expense).
3. If the leave request is due to the employee's serious health condition, the employee is required to provide medical certification stating the date the health condition commenced, the probable duration, the appropriate medical facts concerning the condition, and that the employee cannot perform the functions of their job.

4. If the leave request is due to the serious health condition of a family member, the employee is required to provide medical certification stating the date the health condition commenced, the probable duration, the appropriate medical facts concerning the condition, and an estimate of the time the employee will be needed to care for the family member.

**B. Federal Family Medical Leave**

1. If the leave request is for leave to care for a covered service member, the employee is required to provide certification of the date on which the serious medical condition or injury commenced, the probable duration, the appropriate medical facts within the knowledge of the health care provider regarding the condition or injury, and an estimate of the time the employee will be needed to care for the covered service member.

**VII. LEAVE TAKEN INTERMITTENTLY OR ON A REDUCED LEAVE SCHEDULE**

**A. Federal Family Medical Leave:**

1. If both parents of a child are employed by the District, they each are entitled to a total of twelve (12) weeks of leave per year. However, leave may be granted to only one parent at a time and if leave is taken: 1) for the birth of a child or to care for the child after birth; or 2) for placement of a child for adoption or foster care or to care for the child after placement.
2. If spouses are employed by the District, the aggregate number of weeks of leave that can be taken is twenty-six (26) weeks in a single twelve (12) month period for service person leave or a combination of exigency or service person leave. The aggregate number of weeks of leave that can be taken by a husband and wife who work for the same employer is twelve (12) weeks if for exigency leave only.
3. Any leave taken for FMLA-qualifying purposes (including leave taken under employment policies, bargaining agreements, or contracts) will also be applied to an employee's annual FMLA entitlement. When paid leave taken for FMLA-qualifying purposes is exhausted, the balance of FMLA leave will be unpaid.
4. The employee must follow the employer's standard notice and procedural policies for taking FMLA.
5. Except as provided elsewhere in this policy, an employee must submit an application for leave at least thirty (30) days in advance when the leave is foreseeable or as soon as practical if it is not foreseeable.
6. If an employee fails to provide thirty (30) day notice of foreseeable leave, the leave may be delayed to start thirty (30) days after notice is given, provided the employee had actual notice of the FMLA notice requirements.
7. When the need for FMLA leave is foreseeable fewer than thirty (30) days in advance, or the needed for FMLA leave is not foreseeable, and the employee fails to provide notice as soon as practical, the extent to which FMLA leave may be delayed depends upon the facts of the particular case.

**B. Maine Family Medical Leave:**

1. Leave for birth or placement related to adoption may not be taken intermittently or on a reduced schedule unless agreed to by both employer and employee;
2. Leave for a serious health condition of employee or their child, domestic partner's child, grandchild, domestic partner/spouse's grandchild, parent, domestic partner or spouse, or for organ donation by the employee may be taken intermittently or on a reduced leave schedule. When medically necessary;
3. The taking of leave intermittently or on a reduced leave schedule may not result in a reduction in the total amount of Maine Family Medical Leave to which the employee is entitled beyond the amount of leave actually taken;
4. If an employee requests intermittent leave or leave on a reduced leave schedule for a serious health condition of the employee or their child, domestic partner's child, grandchild, domestic partner/spouse's grandchild, parent, domestic partner or spouse, or for organ donation by the employee that is foreseeable based on planned medical treatment, the employee may require the employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that 1) has equivalent pay and benefits, and 2) better accommodates recurring periods of leave than the regular employment position of the employee.

**VIII. NOTICE FOR LEAVE DUE TO ACTIVE DUTY OR CALL TO ACTIVE DUTY OF A FAMILY MEMBER**

**A. Federal Family Medical Leave:**

1. In any case in which the necessity for leave is foreseeable, whether because the spouse or a son, daughter, or parent of the employee is on active duty or because of notification of an impending call or order to active duty in support of a contingency operation, the employee will provide such notice to the employer as soon as is practicable.

**IX. EMPLOYER NOTICE REQUIREMENT (29 CFR §825.300)**

**A. Federal Family Medical Leave:**

1. Employers are required to provide employees with notice explaining the FMLA through a poster and either a handbook or information upon hire. If an employee requests FMLA leave, an employer must provide notice to the employee within five (5) business days of whether the employee meets the FMLA eligibility requirements. If an employee is not eligible to take FMLA, the employer must provide a reason. The employer must also provide a rights and responsibilities notice outlining expectations and obligations relating to FMLA leave. If the employer approves FMLA leave, it must provide the employee with a designation notice stating the amount of leave that will be counted against an employee's FMLA entitlement.

**X. INSURANCE**

**A. Federal Family Medical Leave:**

1. An employee out on FMLA leave is entitled to continued participation in the appropriate group health plan, provided the employee continues paying the usual premiums throughout the leave period. An employee's eligibility to maintain health insurance coverage will lapse if the premium payment is more than 30 days late.

## **XI. RETURN**

### **A. Federal and Maine Family Medical Leave:**

1. Upon return from FMLA leave, the employee will be restored to their previous position or to an equivalent position with equivalent pay, benefits, and other employment terms.
2. An employee returning from FMLA leave for their own serious health condition is required to submit medical certification that indicates fitness to return to work and ability to perform the functions of the job.
3. If the employee is unable to return to work because of their own serious health condition at the end of allowable FMLA leave, the Superintendent or Board may consider a request for extension of unpaid leave and benefits on a case-by-case basis as per the Collective Bargaining Agreements. Unless an extension has been granted, failure to return to work upon the expiration of FMLA leave may subject the employee to immediate termination.

## **XII. SPECIAL RULES FOR INSTRUCTIONAL EMPLOYEES**

### **A. Federal Family Medical Leave:**

1. Under Federal regulations, certain special rules apply to instructional employees. These rules affect the taking of leave near the end of a semester and the taking of intermittent leave or leave on a reduced leave schedule.

## **XIII. INTERACTION BETWEEN FEDERAL AND MAINE LAWS**

- A.** When an employee is eligible for leave under both the Federal and Maine statutes, the applicable law will be the one that provides the greater benefit.
- B.** The District will analyze each request to determine eligibility for Federal and/or Maine FMLA leave.

## **XIV. RECORDKEEPING**

### **A. Federal and Maine Family Medical Leave:**

1. Employees, supervisors, and building administrators will forward requests, forms, and other material to payroll to facilitate proper recordkeeping.