

All eligible employees of this district may take leave as provided by the FMLA. The FMLA entitles eligible employees to take up to twelve (12) weeks of unpaid, job-protected leave during a twelve-month (12-month) period for specified family and medical reasons.

An eligible employee is defined as an individual who:

1. Has been employed by the district for at least twelve (12) months (need not be consecutive months of employment); and
2. Has been employed for at least one thousand two hundred fifty (1,250) hours of service during the twelve-month (12-month) period immediately preceding the commencement of the leave; and
3. Is employed at a worksite where fifty (50) or more employees are employed by the district within seventy-five (75) miles of the worksite.

For the purpose of determining continuing eligibility for FMLA, this district will calculate the "twelve-month (12-month) period immediately preceding the commencement of the leave" as the fiscal year beginning July 1 of each year.

BASIS FOR TAKING FMLA

FMLA leave may be taken by an employee for any of the following reasons:

1. To care for the employee's child after birth or placement of a child with the employee for adoption or foster care;
2. To provide care for the employee's spouse, child, or parent, who has a serious health condition; or
3. For a serious health condition that makes the employee unable to perform the employee's job.
4. Because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent, of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.

SERVICEMEMBER FAMILY LEAVE

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember is entitled to a total of 26 workweeks of leave during a 12-month period to care

for the servicemember **who is recovering from a serious illness or injury sustained in the line of duty on active duty.** Such leave shall only be available during a single 12-month period.

During the single 12-month period, an eligible employee shall be entitled to a combined total of 26 workweeks of leave, including the 12 weeks for a “qualified exigency.” However, there is no limitation on the availability of leave during any other 12-month period. If the district employs both spouses to whom this section applies, the husband and wife are limited to a total of 26 workweeks during the 12-month period for all types of FMLA leave.

DEFINITIONS

“Child (son or daughter)” includes biological, adopted, or foster child, stepchild, legal ward, or a child of a person standing *in loco parentis* (in place of parent). The child must be either under 18 years of age or, if over 18, incapable of self-care because of a mental or physical disability, or be a covered servicemember.

“Parent” includes a biological parent (not parent-in-law) or someone who stood *in loco parentis* when the employee was a child.

“Spouse” is a husband or wife, including a common-law husband or wife, but does not include a “significant other” or “domestic partner.”

“Serious health condition” is a condition that involves either in-patient care or “continued treatment” by a health care provider.

“Continued treatment” includes:

1. Any three (3)-day period of incapacity that involves: (a) at least two (2) visits to a health care provider; or (b) a regimen of continued treatment under a health care provider’s supervision;
2. Any period of incapacity due to pregnancy (including severe morning sickness), even if no treatment is obtained for prenatal care;
3. Any period of incapacity due to a chronic medical condition, such as asthma, diabetes, or epilepsy, even if no treatment is obtained;
4. Any period of absence to receive multiple treatments for restorative surgery or a serious illness such as cancer, severe arthritis, or kidney disease; or
5. Any permanent or long-term incapacity (e.g., Alzheimer’s or severe stroke), even if no treatment is being provided.

“Next of kin” is the only living relative of a covered servicemember.

USE OF ACCRUED PAID LEAVE

Any accrued paid leave used by an employee for absences which qualify for FMLA coverage will be counted as FMLA leave, unless the district determines otherwise.

INTERMITTENT OR REDUCED LEAVE SCHEDULE

The district will comply with the mandates of FMLA, including any special rules which may apply regarding the taking of intermittent leave or leave on a reduced leave schedule, or leave near the end of an academic term by instructional employees. Exhibits A and B set forth employees' rights under this Act.

HEALTH INSURANCE COVERAGE

The district will also comply with all mandates of FMLA regarding health insurance coverage and will provide any necessary notice of termination of such insurance coverage due to the employee's failure to pay his/her portion of the premium or the employee's request for termination of coverage. Such notice will be provided at least fifteen (15) days prior to the termination of coverage.

This district will post a notice approved by the Secretary of Labor explaining the rights and responsibilities under FMLA at the district offices.



LEGAL REFERENCE:

Family and Medical Leave Act of 1993
29 USC 2654
29 CFR 825
Idaho Code Section 33-1216

ADOPTED: April 13, 2004

AMENDED: January 10, 2012

ATTACHMENTS:

Exhibit A, *The Family and Medical Leave Act of 1993,*
ESA Fact Sheet No. 28
Exhibit B, *Notice to Employees of Rights Under FMLA*
Exhibit C, *Notice of Military Family Leave*

THE FAMILY AND MEDICAL LEAVE ACT OF 1993 ESA Fact Sheet No. 28

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family and Medical Leave Act (FMLA) for all private, state and local government employees, and some federal employees. Most federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the U.S. Office of Personnel Management or the Congress.

FMLA became effective on August 5, 1993, for most employers. If a collective bargaining agreement (CBA) was in effect on that date, FMLA became effective on the expiration date of the CBA or February 5, 1994, whichever was earlier. FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. The employer may elect to use the calendar year, a fixed 12-month leave or fiscal year, or a 12-month period prior to or after the commencement of leave as the 12-month period.

The law contains provisions on employer coverage; employee eligibility for the law's benefits; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and, protection for employees who request or take FMLA leave. The law also requires employers to keep certain records.

EMPLOYER COVERAGE

FMLA applies to all:

- public agencies, including state, local and federal employers, local education agencies (schools), and
- private-sector employers who employ 50 or more employees in 20 or more workweeks in the current or preceding calendar year and who are engaged in commerce or in any industry or activity affecting commerce - including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee must:

1. work for a covered employer;
2. have worked for the employer for a total of 12 months*;
2. have worked at least 1,250 hours over the previous 12 months*; and
3. work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

* See special rules for returning reservists under USERRA.

LEAVE ENTITLEMENT

A covered employer must grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- for the birth and care of the newborn child of the employee;
- for placement with the employee of a son or daughter for adoption or foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- to take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitled to combined total of 12 work-weeks of family leave for the birth and care of the newborn child, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

Leave for birth and care, or placement for adoption or foster care must conclude within 12 months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently - which means taking

leave in blocks of time, or by reducing their normal weekly or daily work schedule.

- If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.
- FMLA leave may be taken intermittently whenever medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Also, subject to certain conditions, employees or employers may choose to use accrued paid leave (such as sick or vacation leave) to cover some or all of the FMLA leave.

The employer is responsible for designating if an employee's use of paid leave counts as FMLA leave, based on information from the employee.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; or
- continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:

(1) A health condition (including treatment therefore, or recovery therefrom) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes:

- treatment two or more times by or under the supervision of a health care provider; or
- one treatment by a health care provider with a continuing regimen of treatment; or

(2) Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; or

(3) A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity

(e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; or

(4) A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; or

(5) Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

"Health care provider" means:

- doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; or
- podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; or
- nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law; or
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or
- any health care provider recognized by the employer or the employer's group health plan benefits manager.

MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave, nor be counted against the employee under a "no fault" attendance policy..

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, an employer may refuse to reinstate certain highly-paid "key" employees after using the FMLA leave during which health coverage was maintained. In order to do so, the employer must:

- notify the employee of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave;
- notify the employee as soon as the employer decides it will deny job restoration, and explain the reasons for this decision;
- offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; and
- make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

A "key" employee is a salaried "eligible" employee who is among the highest paid ten percent of employees within 75 miles of the work site.

NOTICE AND CERTIFICATION

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable.

Employers may also require employees to provide:

- medical certifications supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;
- second or third medical opinions (at the employer's expense) and periodic recertification; and

- periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When intermittent leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the employer's operation.

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to \$100 for each separate offense.

Also, covered employers must inform employees of their rights and responsibilities under FMLA, including giving specific written information on what is required of the employee and what might happen in certain circumstances, such as if the employee fails to return to work from FMLA leave.

UNLAWFUL ACTS

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also bring a private civil action against an employer for violations.

OTHER PROVISIONS

Special rules apply to employees of local education agencies. Generally, these rules provide for FMLA leave to be taken in blocks of time when intermittent leave is needed or the leave is required near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime

under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the “salary basis” requirements for FLSA’s exemption extends only to “eligible” employees’ use of leave required by FMLA.

The FMLA does not affect any other federal or state law which prohibits discrimination, nor supersede any state or local law which provides greater family or medical leave protection. Nor does it affect an employer’s obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan. The FMLA also encourages employers to provide more generous leave rights.

FOR ADDITIONAL INFORMATION: If you have access to the Internet, visit the U.S. Department of Labor’s Wage and Hour Division website: <http://www.wagehour.dol.gov>, and/or call their toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

NOTICE TO EMPLOYEES OF RIGHTS UNDER FMLA

YOUR RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to “eligible” employees for certain family and medical reasons. Employees are eligible if they have worked for their employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles. The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances.

REASONS FOR TAKING LEAVE: Unpaid leave must be granted for any of the following reasons:

- to care for the employee’s child after birth, or placement for adoption or foster care;
- 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.

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

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is “foreseeable.”
- 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.

JOB BENEFITS AND PROTECTION:

- For the duration of FMLA leave, the employer must maintain the employee’s health coverage under any “group health plan.”

- Upon return from the FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- 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.

UNLAWFUL ACTS BY EMPLOYERS: FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- 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.

ENFORCEMENT:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

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.

FOR ADDITIONAL INFORMATION: If you have access to the Internet visit the U.S. Department of Labor’s FMLA website: <http://www.dol.gov/esa/whd/fmla>. To locate your nearest Wage-Hour Office, telephone the Wage-Hour toll-free information and help line at 1-866-4USWAGE (1-866-487-9243): a customer service representative is available to assist you with referral information from 8am to 5pm in your time zone; or log onto the U.S. Department of Labor Home Page at <http://www.wagehour.dol.gov>.

NOTICE

MILITARY FAMILY LEAVE

On January 28, 2008, President George W. Bush signed into law the National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181. Section 585(a) of the NDAA amended the FMLA to provide eligible employees working for covered employers two important new leave rights related to military service:

- (1) New Qualifying Reason for Leave. Eligible employees are entitled to up to 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. By the terms of the statute, this provision requires the Secretary of Labor to issue regulations defining “any qualifying exigency.” In the interim, employers are encouraged to provide this type of leave to qualifying employees.
- (2) New Leave Entitlement. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of leave in a single 12-month period to care for the servicemember. This provision became effective immediately upon enactment. This military caregiver leave is available during “a single 12-month period” during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave.

Additional information on the amendment and a version of Title I of the FMLA with the new statutory language incorporated is available on the FMLA amendments website at http://www.dol.gov/esa/whd/fmla/NDAA_fmla.htm.